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THE
Election Laws of Indiana,

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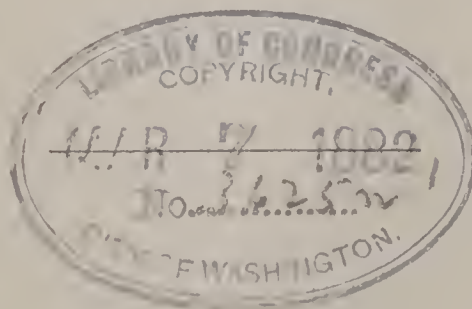
GENERAL, SPECIAL AND TOWNSHIP ELECTIONS,

AND

PUNISHMENTS PRESCRIBED FOR THE VIOLATION
THEREOF;

WITH

DECISIONS OF THE SUPREME COURT THEREON, CONSTITUTIONAL
AMENDMENTS, AND ACTS OF 1881, MADE IN
PURSUANCE THEREOF.



INDIANAPOLIS:

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EXPLANATION.

The election laws made in pursuance of the late constitutional amendments are entirely new in some of their provisions, requiring officers having duties to perform under them to carefully study and examine the requirements of them anew.

To facilitate this labor, and to render this task as easy as possible, the laws have been compiled and so arranged as to condense into one place the duties required of each officer.

The duties of election boards have been carefully collected, and the duties of inspectors and judges pointed out and explained by reference to supreme court decisions thereon.

The necessary forms of oaths of inspectors, judges and clerks, with oaths and manner of proceeding in cases of challenged voters, are given in full, with full explanation of the duties of officers in making returns, and certifying the same.

ELECTIONS.

CONSTITUTIONAL PROVISIONS.

GENERAL ELECTION—WHEN HELD.

It is provided by Section 1, Article II., of the Constitution of the State of Indiana, that “all elections shall be free and equal.”

It is also provided by Section 2, Article II., of the Constitution of Indiana, “that in all elections not otherwise provided for in this constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the last six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upward, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such an election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall be duly registered according to law.” Acts 1881, p. 30.

Section 14, Article II., of the Constitution of Indiana, provides that “All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law:

Provided, That the general assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction, by an election to be held for such officers, at which time no other officer shall be voted for, and shall also provide for the registration of all persons entitled to vote." *Id.*

Section 6, Article II., of the Constitution of the State of Indiana, provides that "Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat or reward to procure his election. 1 G. & H., 35; 1 R. S. 1876, 26.

Section 13, Article II., of the Constitution of Indiana, provides that "All elections by the people shall be by ballot, and all elections by the general assembly, or by either branch thereof, shall be *viva voce*." 38 Ind., 89.

By sections 7 and 9 of schedule to the constitution, all officers, state and county, shall be elected at the general elections; so, also, members of the lower house of Congress. And, under the constitution as now amended, the electors for President and Vice-President shall be elected at the general election.

The legislature declares, in its act approved April 21, 1881, (Acts 1881, p. 482), that an election shall be held on the first Tuesday after the first Monday in November, in the year 1882, and biennially thereafter on the same day, "at which election *all* existing vacancies in office, and *all* officers the terms of which will expire before the next general election thereafter, shall be filled, unless otherwise provided by law. But by section 57 of the same act, (Acts 1881, p. 495), it is provided that an election shall be held in each township of each county in this state on the first Monday of April, 1882, and every second year thereafter, for the purpose of electing justices of the peace, township trustees, assessors, constables, and such other officers for such township as may be provided by law.

By an act approved April 15, 1881, (Acts 1881, p. 535), it is provided, "That at the township election on the first Monday in April, 1882, and biennially thereafter, there shall be elected one superintendent of roads in each township throughout the state, who shall hold his office for two years.

CLERK OF CIRCUIT COURT.

It is made the duty of the clerk of the circuit court to certify to the sheriff of the county what officers are to be elected at any general or township election, including therein all officers whose term of office will expire within two years of the next ensuing election. This certificate shall be delivered to the sheriff at least twenty days before the election. Section 2, acts 1881, 482; 15 Ind., 327.

It is made the duty of the clerk of the circuit court to receive from the inspector of any election the ballots, with one of the lists of voters and one of the tally sheets, the same having been first closely enveloped in a strong paper envelope and sealed with wax, and marked with ink, giving number and name of township, on or before the Thursday next succeeding such election. Section 35, p. 490, Acts 1881.

Before receiving such package, the clerk shall cause such inspector to take and subscribe an oath, which may be in the following form:

STATE OF INDIANA, }
COUNTY OF _____ } ss:

I, A B, inspector of an election held at _____, in _____ township of said county, on the _____ day of _____, 188..., swear that at the close of such election, I, in the presence of the judges, placed all the ballots, one of the poll lists and tally papers, in a paper envelope, and sealed the same with wax in the presence of said judges, and now deliver said package to the clerk of the circuit court of said county, and I further swear that I have securely kept the same, and permitted no one to open said envelope, or to touch or tamper with said ballots or papers therein, and that no person has broken such seal or opened such envelope to my knowledge, and that the same are in all respects in the same condition they were when sealed in the presence of the judges.

A B.

The clerk shall administer this oath to the inspector, and securely keep such envelope, so sealed, with the ballots and papers therein in the same condition it was in when delivered

to him by the inspector in his office, unless opened by said inspector in the presence of the board of canvassers, as herein provided, for a period of six months. Section 36.

The clerk of the circuit court shall act as clerk of the board of canvassers. Section 38.

When any person is elected to any office, not to be commissioned by the governor, the clerk, after ten days from the time of the return of such election, shall, on demand, make out and deliver to such person a certificate of his election; but in cases where the officer is to be commissioned by the governor, he shall make out his statement, under his hand and seal, giving therein the number of votes given to each person, for each office, and who has been declared elected, and shall transmit the same, by mail, to the secretary of state within ten days. Section 43.

In the election of state senators or representatives, when two or more counties compose the district, the clerks of such counties shall, on the next day after the return, make out a certificate of the votes received by each person for senator or representative, and deliver the same to the sheriff of his county. Section 45. In cases where two or more persons shall receive the highest and an equal number of votes, the clerk of the county where the canvass is made shall forthwith certify the fact to the governor. Section 47.

On the day succeeding the canvass, the clerk shall make out certified statements, under his hand and seal, of the number of votes given to each person for governor and lieutenant governor, for representative in Congress, judges of the supreme and circuit courts, clerk of supreme court, reporter of decisions of the supreme court, prosecuting attorney, superintendent of public instruction, secretary, treasurer and auditor of state, and for senator and representatives in the general assembly, and deliver the same to some postmaster of the county, to be transmitted by mail to the secretary of state, taking from such postmaster a receipt for the same, setting forth particularly when such certified statement was deposited. Section 48.

On the day following the return day of an election for governor and lieutenant governor, the clerk shall make out, at full length, certified statements, under the seal of the court, of such election, and transmit a copy to the speaker of the house of

representatives of the next general assembly, by his senator or representative, who shall deliver the same to the speaker on or before the second day of the session, and another copy directed to the speaker, shall be transmitted by mail in the care of the secretary of state. Section 57.

When a justice of the peace has been elected the clerk shall certify the fact to the secretary of state. Section 59.

In cases of recount the clerk of the circuit court shall act as clerk of the commissioners appointed for the purpose; and when the recount is completed the clerk shall file in his office the certificate of such recount, and record the same in the order book. Section 64.

When a recount is completed, the clerk shall replace the ballots in the ballot boxes and securely lock the same, and the clerk shall receive from the petitioner for his services five dollars for every day he is so engaged. Section 65.

For the duties of clerk in cases of contested election, see Sections 70, 71, 72, 75, 76, 78, 82, 88 and 90, Acts 1881, pp. 499-502.

COUNTY COMMISSIONERS.

The board of commissioners of each county, where the same has not been already done, shall at the first session after the taking effect of this act, or as soon thereafter as practicable, designate places of holding elections and precincts, *which shall be described by definite boundaries*. There shall be at least one place of voting in each township; and when there is but one voting place, the township shall constitute a precinct. A township may be divided into two or more precincts, but there shall be but one voting place in a precinct. No precinct shall contain more than three hundred and fifty voters, to be ascertained by the board of commissioners as nearly as possible by the official returns of the last general election. In forming precincts, regard shall be had to natural divisions, population and convenience of voters. Section 8.

The board of commissioners may change the boundary of any precinct, or divide any precinct into two or more, or of two or more form one, or change the place of holding election when-

ever public convenience requires; but no change of the boundary of any precinct, or the place of holding elections in any precinct, shall be made after the June term of said board on the year of any election; but no such change, division or consolidation shall be valid without giving due notice of at least one month before any election, in the newspaper having the largest circulation in the county, or by posting notices in four of the most public places in the precinct. Section 9.

When there is but one precinct in a township, the township trustee is by virtue of his office, inspector. Section 10.

Where there are more than one precinct in a township the board of commissioners, at their June term next preceding any election, shall appoint some qualified voter of such precinct as inspector, who has been a freeholder and resident householder in the precinct for at least one year previous to such election. The board may at a regular or called session fill any vacancy that may occur. Section 11.

The board of commissioners shall provide a suitable number of ballot boxes to furnish one to each precinct. Such ballot boxes shall contain at least two locks. Section 18. For manner of constructing same, see Sections 18 and 19.

Contests of the election of county and township officers shall be tried by the board of commissioners of the county; but all contests of district and circuit officers, not otherwise provided for, shall be tried in the county giving the largest vote for such officer. Section 81 *et seq.* For the manner of conducting a contest before the board of commissioners, see Clarke on Commissioners and Auditors, pp. 26–37. See also, 46 Ind., 122; 27 Ind., 197; 16 Ind., 319; 15 Ind., 327; 39 Ind., 605; 34 Ind., 425; 32 Ind., 121; 41 Ind., 572; 14 Ind., 93.

INSPECTORS.

The township trustee is *ex-officio* inspector of elections in his township. When more than one precinct has been formed in a township, the trustee shall be the inspector in the precinct in which he resides, and an inspector for each additional precinct of the township shall be appointed. Sections 10 and 11.

The inspector so appointed shall be a resident freeholder and householder of the precinct, and shall have been such for at least one year next preceding the election at which he acts as inspector. Section 11.

It is made the duty of each inspector of elections to be present at the place of holding elections in his township or precinct at or before eight o'clock in the morning of the day of election, and should such inspector not appear at that hour, or if from any cause there should be a vacancy in the office of inspector, or none has been appointed, then the qualified voters of the precinct who may be present shall appoint by a majority *viva voce* vote some qualified voter of the precinct, who shall have been a resident householder and freeholder in such precinct at least one year next succeeding such election. Section 14.

The inspector shall be chairman of the board of election. He shall, prior to the opening of the polls in his precinct, appoint as judges of the election two qualified voters of the precinct, who have been freeholders and resident householders therein for at least one year next preceding such election, who are members of different political parties, and of the parties which cast the highest number of votes in such precinct at the next preceding general election; and such judges, together with the inspector, shall constitute the board of election. Section 15.

BOARD OF ELECTION.

The board of election consists of one inspector and two judges. But no person shall be eligible as a member of the board of election who has anything of value bet or wagered on the result of such election, or who is a candidate or of kin to any candidate of such election. Section 10; 47 Ind., p. 127.

The inspector may, at any stage of the election, if it shall be made to appear by the affidavit of any qualified voter of the precinct, that either or both of such judges are disqualified, remove such judge and fill his place with a qualified person; and if such disqualified judge shall have taken the oath of office, the inspector shall place such oath and affidavit before the next grand jury. *Id.*

Such board of election shall appoint two clerks, who shall be qualified voters of such precinct, and belong to the two different political parties casting the highest number of votes in the precinct. Section 10.

Before any election shall be opened, the inspector and judges shall each make oath to support the constitution of the United States, and of this state, to faithfully and impartially discharge the duties assigned by law. Section 15.

This oath shall be in writing or printed, and shall be subscribed and executed before some officer authorized by law to administer oaths; which officer shall attach his jurat, and such oath shall be attached to the poll book, and with it returned to the clerk's office. Section 15.

When no other officer is present to administer the oaths of office, the inspector shall administer the oath to the judges, and one of said judges shall then administer the oath to the inspector. Section 16.

OATH OF INSPECTOR. .

The oath of inspector may be in the following form:

STATE OF INDIANA, }
COUNTY OF _____ } ss:

I, A B, swear that I will support the Constitution of the United States, the Constitution of the State of Indiana, and that I will faithfully and impartially discharge my duties assigned by law; that I will not knowingly permit any person to vote who is not qualified, and not knowingly refuse the vote of any qualified elector, or cause any delay to a person offering to vote, further than is necessary to procure satisfactory information of the qualifications of such person as an elector; that I am now a *bona fide* resident and freeholder in this precinct, and have been such resident and freeholder of the township in which this precinct is situated for more than one full year next preceding this election. So help me God. A B.

Sworn to and subscribed before me, this —— day
of ———, 188—.

C D, Justice.

This form, with a little modification, will answer for the oath of the judges. See section 15.

The inspector and judges may join in one affidavit, as follows:

STATE OF INDIANA, }
COUNTY OF _____. } ss:

I, A B, as inspector, and C D and E F, as judges, do each solemnly swear that I will support, etc., the same as above. Section 15.

The oath administered to the clerks is required to be in writing, and may be administered by the inspector. This oath shall bind such clerks to a faithful discharge of their duties. Section 17.

The oath of the clerks and all other oaths which may be required in the discharge of the duties of the election board shall be in writing or printed, and shall be signed by the person making such oath in the presence of such board, and the person administering such oaths shall affix his jurat thereto, and said affidavit shall be attached to and returned with the poll book to the office of the county clerk. Section 17.

When the election board and clerks have each taken the oath required by law, the election shall be opened between eight and ten o'clock in the forenoon and remain open until four o'clock in the afternoon, when said election may be closed at any time, when all the electors of the precinct have voted, or when no vote has been offered for fifteen minutes; but in no case shall the polls be kept open after six o'clock in the afternoon; nor shall the polls be closed before six, except by the unanimous consent of the members of the election board. Section 20.

When the polls are closed the inspector must proclaim that fact, and the clerk shall make a minute of the fact of such closing and proclamation on the tally papers, and the exact time shall be stated. *Id.*

CHALLENGES.

Any person offering to vote may be challenged as unqualified by any qualified elector; and it is the duty of the inspector and judges to challenge any person offering to vote whom they, or either of them, shall know or suspect not to be qualified; and if the person challenged insists upon voting, and the challenge be not withdrawn, the inspector, or one of the judges, shall administer to him, if he claims to be a citizen of the United States, an oath, which must be written or printed, which shall be signed by the person making such oath in the presence of the board, and the member of the board who administered the oath shall affix his jurat, and the oath and jurat shall be attached to and returned with the poll list to the office of the clerk of the circuit court. Section 24; 9 Ind., 475; 52 Ind., 361.

OATH OF CHALLENGED VOTER.

STATE OF INDIANA, }
COUNTY OF _____ } ss:

I, H M, do solemnly swear that I am a citizen of the United States; that I am over the age of twenty-one years, to the best of my information and belief; that I have been a *bona fide* resident of this state for six months immediately preceding this election; that I have resided in this township sixty days, and in the precinct thirty days, and am now a *bona fide* resident of this precinct; that I am generally known by the name in which I now desire to vote, and that I have not voted and will not vote in any other precinct at this election. H M.

Sworn to and subscribed before, and in the presence of the election board, this _____ day of _____, 188—.

A B, Inspector.

If the party offering to vote does not claim to be a citizen of the United States, the oath may be in the following form:

STATE OF INDIANA, }
COUNTY OF _____ } ss:

I, C V, do solemnly swear that I have resided in the United States one year, and have declared my intention to become a citizen thereof in conformity with the laws thereof; that I am over twenty-one years of age, to the best of my information and belief; that I have been a *bona fide* resident of this state for six months immediately preceding this election, that I have resided in this township sixty days, and in this precinct thirty days, and am now a *bona fide* resident of this precinct; that I am generally known by the name in which I now desire to vote, and that I have not voted, and that I will not vote in any other precinct at this election.

Signature and jurat same as last. Section 24; 17 Ind., 536.

In addition to the oath of the challenged party, whether he claims to be a citizen or not, the oath of some qualified voter in such precinct, who has been a freeholder and a resident householder in such precinct for at least one year next preceding such election, is required.

OATH OF RESIDENT FREEHOLDER.

STATE OF INDIANA, }
COUNTY OF _____ } ss:

I, R F, do solemnly swear that I am a qualified voter of this precinct, and that I have been a freeholder and resident householder in this precinct for one year next preceding this election, and that ————, who now offers to vote, has resided in this state for six months immediately preceding this election; and that he has resided in this township sixty days, and in this precinct thirty days, and is now a *bona fide* resident of this precinct.
R F.

Sworn to and subscribed before and in the presence of the board of election this — day of ————, 188—.

A B, Inspector.

If a person challenged take such oath and be supported by a resident freeholder and householder of the precinct his vote shall be received, and it shall not be lawful thereafter for said board to examine any witnesses touching the qualifications of such voter, but if he refuse to take the oath, other witnesses may be examined. Section 25.

When a party is challenged by the board, or by any qualified elector, it is the duty of the board to state to him the requisites to entitle him to vote, and if he still persist in his offer to vote, and swears or offers to swear, the board may refuse to swear him, and even after he has been sworn the board may refuse his vote, but they do so at the peril of being able to show that he is not a legal voter; and on a prosecution for refusing the vote, the burden is upon them. 17 Ind., 536.

The board are only liable for rejecting a *legal* vote, and though the person offering to vote may have taken the oath required by law, and have been supported by the oath of a resident freeholder and householder, yet the penalty for refusing the vote does not attach, if the board are able to show that he was not a *legal* voter. But when the person offering to vote takes the required oath, the board may receive the vote, and the oath of the party is a protection to the board, unless it can be shown that they acted corruptly, and were cognizant of the fact that he was not a legal voter. *Id.*

The statutes regulating the mere mode of conducting elections are only directory, and a departure from the prescribed mode will not vitiate an election unless such departure or irregularity deprives some legal voter of his vote, or permits a disqualified voter to vote, or casts uncertainty on the result, and even then, the irregularity must have been occasioned by the agency of the party seeking to derive a benefit from it. 35 Ind., 425.

When an elector offers to vote, the inspector shall pronounce the voter's name audibly, and if no challenge is made, he shall receive the ballot, and in the presence of the judges shall place the ballot in the box, when the name of such voter shall again be audibly repeated by one of the judges, in the presence and hearing of the clerks, who shall enter and number the name of such voter on the poll lists. Sections 26, 27.

No inspector, clerk or judge of any election shall vote after

the counting of the vote is commenced; nor shall the result of their counting be disclosed until the election is closed. Section 29.

There shall be no adjournment or recess from the time the election is opened until the count is completed, and the result publicly announced. Section 30.

The township trustee shall cause the election boards of his township to be furnished with good plain and substantial meals, at the regular hours for meals, during election day and until the count is completed, but no spiritous, vinous or fermented liquors shall be furnished by such trustee. Section 31.

When the polls are closed the inspector and judges shall open the ballot box, and commence counting the votes; the inspector shall take the ballots out, one by one, and open them as he takes them out, and read aloud the name of each person printed or written thereon, and the office for which every such person is voted; he shall then hand the same to one of the judges, who shall examine the same, and hand the same to the other judge, who shall string it on a thread of twine. Section 32.

If more persons are designated on any ticket to any office than are to be elected to such office, such part of the ticket shall not be counted to any of them. A ticket shall not be thrown aside for want of form if there be enough about it to satisfy the judges of the person voted for and the office; nor shall a ticket be rejected for any misarrangement of initial letters, or the misspelling of a name of any candidate. If the board are able to discover to the satisfaction of a majority of them the person intended to be voted for, the ballot shall be counted. Section 28.

Each political party having a candidate to be voted for at any election may be represented by two qualified voters of the precinct, who may witness the counting and may remonstrate against any fraud or irregularity that may occur. But all such persons shall be quiet and orderly, and shall not interrupt the board in the discharge of their official duty, except to state and file such protest; but no other persons shall be admitted except the board and their sworn clerks, and the witnesses herein provided for. All protests shall be in writing, and the same shall be kept by the inspector and shall be returned with the other papers to the clerk's office. Section 33.

The board may not refuse the admission of the witnesses herein provided for, under a penalty of not less than five nor more than fifty dollars. *Id.*

Quære: Whether such witnesses have the right to be present after the count has been commenced and before the polls are closed.

When the votes are counted the board shall make out a certificate, under their hands, stating in words the number of votes each candidate has received, and designating the office. And such certificate and one of the tally papers and one of the lists of voters, shall be deposited with the inspector, or with one of the judges. Section 34.

Before making such certificate, mentioned in section 34, all the ballots, with one of the poll lists and one of the tally sheets, together with all affidavits taken in cases of challenged votes, and all protests filed by witnesses, as provided for in section 33, shall be by the inspector, in the presence of the judges and clerks, carefully and securely placed in a strong paper envelope or bag, which shall then be tightly closed and well sealed with wax by the inspector, and shall be delivered by the inspector to the county clerk at the very earliest possible period before or on the Thursday next succeeding such election. Section 35. It seems that the inspector may not delegate this duty to any one else, as he is himself required to make oath before the clerk that *he has securely kept* the envelope and the ballots and papers therein; and that after said envelope had been closed and sealed *by him*, in the presence of the judges and clerks, he had not suffered or permitted any person to break the seal or open said envelope, or touch or tamper with said ballots or papers; and that no person has broken such seal or opened said envelope to his knowledge. Section 35. For form of affidavit see clerks' duties, page 7.

The trustee, inspector or judge to whom the certificate, poll book and tally papers shall have been delivered, as provided in section 34, shall constitute a board of canvassers, who shall canvass and estimate the certificates, poll books and tally papers, returned by each member of said board, and they shall assemble between 10 A. M. and 6 P. M. on Thursday next succeeding such election, at the court house for that purpose, and having selected one of their number as chairman, with the clerk of the

circuit court as their clerk, shall make their canvass. Sections 37, 38; 2 Ind., 423.

When the canvass is completed, each member of the board shall sign the tabulated aggregate as made by the clerk, and deliver the same when so signed to the clerk. Section 39.

It is the duty of the board of canvassers to certify the election of the party having received the highest number of votes, if elected by the votes of a single county. Section 40.

In cases of a tie vote for any office to be filled by the votes of their county alone, they shall forthwith declare that no person is elected to fill such office, and certify the same in their statement. Section 41.

No tally paper, poll list or certificate shall be rejected for want of form, nor for lack of being strictly in accordance with the directions herein contained, if the same can be satisfactorily understood. Section 42; 35 Ind., 425.

The board of canvassers shall reject no returns from any precinct if they be certified by the board of election of such precinct, as required by law, and presented by the inspector or one of the judges of the precinct. *Id.*

TOWNSHIP ELECTIONS.

An election shall be held in each township of each county in this state, on the first Monday in April, 1882, and every second year thereafter, for the purpose of electing all township officers, including justices of the peace. This election shall be conducted by the same officers and in the same manner as general elections. Section 57.

The board of judges of a township election shall count the votes given for each person for each office, and certify the result, and the inspector shall file one of the poll books and tally sheets, with the ballots on a string, in the clerk's office within ten days after such election. Section 58.

In cases of a tie the judges, after certifying the same, shall then proceed to determine by lot the person elected. *Id.*

If there are more than one precinct in a township, then the inspectors of the several precincts shall meet on the day fol-

lowing the election at the office of the township trustee, as near 10 o'clock A. M., as is practicable, and compare the poll books and certificates thereto held by them, and having aggregated the vote, declare and certify the result, and if there be found a tie vote they shall determine by lot the party who shall be declared elected, and give a certificate accordingly. But where there is but one precinct the inspector shall, on the day following the election, certify who is elected, and deliver such certificate to the person declared elected, which certificate shall entitle the holder to enter upon and discharge the duties of the office to which he is elected at the expiration of ten days, except that the certificate of the election of justices of the peace shall be forwarded to the clerk of the circuit court, who shall certify the result of such election to the secretary of state. Sections 58, 59; 2 Ind., 243.

SPECIAL ELECTION.

Special elections shall be held to fill vacancies in the office of senator or representative, or member of Congress during a session, or when the legislature or Congress will be in session after the occurrence of a vacancy and before a general election; when two or more persons receiving the highest, and an equal number of votes for the same office, except at a township election, or whenever a vacancy occurs in an office required to be filled by general election. Section 53.

Special elections not otherwise provided for shall be ordered by the governor, who shall issue a writ of election directed to the sheriff of the proper county, or sheriffs of the proper district or circuit in which the election is to be held, stating in such order the cause and object of such election and the day on which it shall be held. Section 54.

The sheriff's duties are the same as in cases of general elections, except that ten days' notice is sufficient. Section 55.

The duties of inspectors, judges, clerks, and canvassers are the same as in cases of general elections. Section 56.

CITY AND TOWN ELECTIONS.

In city and town elections each ward shall constitute a precinct, if the number of voters therein does not exceed three hundred and fifty. It is made the duty of the common council of any city, and of the trustees of any town to make such changes in places of holding elections or divisions in precincts in their respective cities and towns as will limit the number of voters in each precinct to three hundred and fifty, as near as may be. Section 60. See also acts 1881, 100.

But no change shall be made in the voting precincts of any city or town without giving at least one month's notice thereof, either by publication in a newspaper of the largest circulation in the county, or by posting up four notices in four of the most public places in each precinct changed, or division, when a division is made. *Id.*

The city council or trustees of a town shall appoint three qualified voters in each precinct, one to act as inspector and two as judges of such election, who shall have been freeholders in such precinct for at least one year next preceding the election. Such inspector and judges, when so appointed, shall constitute the board of election and possess all the powers and perform all the duties of boards of election. Section 60.

RECOUNT.

At any time within ten days after the Thursday next succeeding any election, any candidate for office at such election desiring to contest the same may petition, in writing, the circuit court, if in session, or the judge thereof in vacation, for a recount of the ballots cast at such election. The court shall appoint three commissioners to make the count, two of whom shall be of different politics. Section 61.

The petition shall be verified and show that he desires to contest such election, and that he honestly believes there was a mistake or fraud committed in the official count. He shall serve notice on the opposing candidate, giving time and place

of making such application. He shall make his undertaking with freehold surety, that he will pay all costs of such recount. Section 62.

The court shall fix the time within which the recount shall commence, not exceeding twenty days from the time of appointing the commissioners. Each of the candidates may be present at such count. Section 63.

The commissioners shall certify their finding, showing the number of votes, and the majority or plurality, showing which of the candidates received the greatest, and shall file such certificate with the clerk of the circuit court, who shall record the same in the order book of the court. Section 64.

There shall be no adjournment until the recount is completed and the certificate made out and filed.

The commissioners shall each receive from the petitioner three dollars per day, and the clerk shall receive for his services, to be paid by the petitioner, five dollars per day. *Id.*

CONTEST OF ELECTIONS.

Any person declared elected by popular vote is subject to having his election contested. This may be done by an opposing candidate, or by any elector entitled to vote for such person. To contest the election of any state officer, elected by the people, the contestor shall, within twenty days after the first day of the next session of the general assembly, deliver to the presiding officer of the house of representatives, a specification of the grounds of such contest. The specification shall be verified.

The presiding officer shall immediately, on receiving such specification, make out a notice of the contest, and shall cause the same to be delivered to the party whose election is contested, and notify both houses of the same. Section 68; 58 Ind., 302.

Each house shall choose seven members of its own body, and the members thus chosen shall constitute a committee to try such contest. Such committee shall have power to send for persons and papers, and use all necessary means to procure

testimony. They shall extend a like privilege to the contesting parties. The report of such committee shall be entered upon the journals of both houses, and the judgment shall be conclusive; and if such election shall be decided invalid the office shall be vacant. Section 69.

The seat of any senator or representative may be contested by any elector entitled to vote for such officer, by filing within ten days after such election, with the clerk of the circuit court, a statement of the grounds of contest, on which he relies. This statement shall show that he was entitled to vote at such election, and be verified by his affidavit. Section 70.

When such statement is filed the clerk shall issue a commission directed to two justices of the peace of his county not of kin to the contestor, nor to any party who was a candidate for the office contested. These justices shall have power to take and certify depositions to be used in such contest. Section 71.

The contestee shall be notified of the time and place of taking such depositions. Section 72.

The justices so commissioned shall each have power to issue subpoenas, to be served by the sheriff, and when met at the time and place of taking depositions may issue attachments, and assess fines against witnesses, for contempt. Section 73.

The justices shall meet at the time and place appointed, and take and certify such depositions as in other cases, and may adjourn from time to time until the same is closed, when they shall deliver such depositions and the commission to the clerk. Section 75; 58 Ind., 8.

The clerk shall seal up the depositions, original statement of grounds of contest, the copy of the notice served on contestee, and the commission issued to such justices, and shall endorse on the envelope the names of the contesting parties, and the branch of the legislature before which the same is to be tried, and transmit the same by mail to the secretary of state, who shall, on or before the second day of the session of the general assembly held next thereafter, deliver the same to the proper presiding officer. Section 77.

Either party to a contest may take depositions in the same manner depositions are taken to be used in the circuit court. Section 78; 41 Ind., 572.

The grounds of contest may be for irregularity or malconduct of the election board; when the contestee is ineligible; when the contestee shall have been convicted of an infamous crime; or, on account of illegal votes. Section 79; 4 Ind., 93; 15 Ind., 327.

Where the contest is on account of malconduct or irregularity on the part of any member of a board of judges or canvassers, it must be made to appear that such irregularity or malconduct was such as to cause the contestee to be declared elected when he had not received the highest number of votes. If for illegal votes, it must be shown that the number thereof given to the contestee, if taken from him, would reduce the number of his votes below the number received by some other person for the same office. Section 80.

All contests for county offices shall be tried before the board of commissioners of the county, and all contests for district and circuit offices shall be tried before the board of commissioners of the county giving the largest vote for such office at such election. Section 81; 46 Ind., 122.

For manner of conducting proceedings before the board of commissioners, see Clarke on Commissioners and Auditors, pp. 26-37.

The statement of grounds of contest must be verified and filed with the county auditor within ten days after the contestee has been declared elected. Section 81.

The auditor, on the filing of such notice, shall at once notify the clerk of the circuit court of such filing and contest, except when the office of county auditor is contested, the statement should be filed with the clerk of the circuit court. Section 82.

When the statement is filed with the auditor he shall issue his precept to the board of commissioners, convening them at the court house at a designated time, not less than ten nor more than twenty days from the filing of the statement, and shall issue a notice or summons to the contestee to appear at such time and place. A copy of the statement shall be given to the sheriff, who shall deliver the same to contestee if he can be found; if not, the notice shall be served by copy as in cases of summons so served, and the copy of statement shall be left with copy of summons. Section 83.

The auditor shall, at the request of either party, issue sub-

pœnas, which the sheriff shall serve and return as subpœnas are served and returned in matters before the circuit court, and the board has the same power of any other court to compel the attendance of witnesses. Section 84.

The board for cause may continue the trial from time to time not exceeding twenty days altogether; and to make the necessary orders for the payment of costs, and coerce the payment of the same, and shall be governed in all things by the rules governing the proceedings in the circuit court. Section 84; 29 Ind., 495.

Either party aggrieved by the decision, or any qualified elector entitled to vote at such election, may appeal from the decision of the board to the circuit court of the county. Section 85.

If, by the decision of the board, or by the circuit court, on appeal, the election is confirmed, a certificate thereof shall issue; but if such election is annulled and no other person declared elected to the same office, it shall be declared vacant. Section 86.

A witness who voted at the election, when called to testify in such case, shall be required to answer touching his qualifications as a voter, and if he was not a qualified voter he shall be required to answer for whom he voted, and such admissions shall not be used against him in any prosecution for illegal voting. Section 87; 38 Ind., 89.

To save expenses the court trying the cause may, at the request of both parties, refer the trial of the cause to a commissioner, to take testimony of witnesses at any time before the first hearing thereof. Such commissioner shall have power to subpoena witnesses and compel their attendance, if they reside in the county. He shall take in writing all the testimony and note objections to the testimony and report the same to the court. Section 89.

Contests of municipal offices shall be tried before the circuit court. Section 90.

In all cases appealed from commissioners to the circuit court, an appeal may again be taken to the supreme court. Section 91.

RIGHTS OF ELECTORS.

Every male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the state during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding any election, and every male of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in the state six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding any election, and shall have declared his intention to become a citizen of the United States, shall be entitled to vote in the precinct where he resides. Section 3.

The elector's residence becomes, under the law, an important circumstance connected with his right to vote.

Residence means a domicile. To gain a residence or domicile in this state, the Supreme Court of Indiana says, in the case of *French vs. Lighty*, 9 Ind., 477: "To gain a domicile in this state, the citizen of another state must remove, locate, and intend permanently to remain here. Residence without such intention operates no change of political rights; and such resident can not vote in this state. Thus, also, a resident in a county for any length of time on business, on a visit for pleasure, or for any temporary purpose, with intention to return to a domicile elsewhere, or without intention to remain for an indefinite time at least, is no abandonment of the former residence or domicile, gives no domicile in the county where the temporary sojourn is made, and consequently no right to vote at such temporary place of residence."

This doctrine will hold good in regard to domicile in a township, ward, or precinct.

Under our law the elector, if he vote at all, must do so in the township, ward or precinct of his residence or domicile. The right to vote, eligibility to office, and liability to taxation in one township are exclusive of these rights and liabilities in all other townships. 9 Ind., 477.

The word "home" is nearly synonymous with the word domicile. Residence within the meaning of our constitution is

a home. The best definition for a domicile seems to be a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain for an unlimited time. But the intention to acquire a domicile in any place is not sufficient without removal to and location in that place. Domicile is acquired instantaneously upon removal and location *animo manendi*. *Id.*

If a person has actually removed to another place, with the intention of remaining for an indefinite period, and as a place of fixed, present domicile, it is to be regarded his place of domicile notwithstanding he may entertain a floating notion to return at some future time. But the act and intention must be united and complete. *Id.*

A party's declaration coupled with his acts furnish the evidence of his intentions. Domicile can always be found and proved. A single man can no more be without a home, a fixed domicile, than a man with a family; and although the domicile of a single man may be more difficult to prove, yet the same rules of evidence prevail in all cases. 9 Ind., 478. So also with men of foreign birth.

In the case of *McCollum vs. White*, 23 Ind., 44, the court say: "Residence is the being in a given place with intention of making it one's home."

In the case of *Yonkey et al. vs. The State ex rel.* 27 Ind., 237, the court say: "As a general rule, when a man is the head of a family, and is a housekeeper, the domicile of the family is presumed to be his legal place of residence. It requires an intention in order to change the domicile, and, therefore, if a person leaves his place of residence temporarily on business or otherwise, but with the intention of returning, he does not thereby lose his domicile."

The same doctrine is held in *Maddox vs. State*, 32 Ind., 111.

A person undergoing a sentence of imprisonment on conviction for a felony or misdemeanor, shall not be entitled to vote during imprisonment. Section 4; Acts 1881, 482.

No soldier, seaman or marine in the army or navy of the United States or of their allies, shall be deemed to have acquired a residence in the State in consequence of his having been stationed within the same, nor shall they have the right to vote. Section 5; Acts 1881, 482.

No person shall lose his residence by reason of absence from this state, on business of this state or of the United States. Section 6; see also 27 Ind., 237.

Electors shall be free from arrest while going to, during their presence at, and while returning from any election, except for treason, felony or breach of the peace. Section 7.

Any two legal electors, if they shall discover that either or both of the judges of any election are disqualified to act as judges, from any cause—that they, or either of them is not, or has not been for at least one year a resident freeholder and householder of the precinct; that he has anything bet or wagered on the result of the election, or is of kin to any candidate voted for at such election—may have such judge removed, by presenting their written charge of any of said causes to the inspector of such election; the charge must be verified by the affidavit of two legal electors. Section 10.

When the inspector for any precinct fails to appear at the voting place in such precinct at or before eight o'clock on the morning of any election, the electors of such precinct who may be present shall appoint an inspector by a majority *viva voce* vote. Section 14.

All elections shall be by ballot. Section 13, Article II Constitution.

Each elector shall vote by ballot in the precinct where he resides. Section 21, Acts 1881, 487; 9 Ind., 475; 35 Ind., 485; 52 Ind., 361.

The ballots which *may be cast* at any election hereafter held in this state; shall be written or printed on plain white paper of a uniform width of three inches, *without any distinguishing mark* or other embellishment thereon, except the name of the candidates they are voting for. Section 22; 38 Ind., 89.

The elector is not voting by ballot if his ticket is so marked, shaped or folded that it may be known, when taken from the box to be counted, who cast it. *Id.*

While the elector at a popular election represents nobody, and is responsible to nobody for the vote he casts, and might, therefore, it would seem, have the right to mark his ticket in any manner he pleased, the legislature seem to have thought otherwise, and, perhaps, wisely, in forbidding any distinguishing marks upon tickets, save the names of the candidates.

In the case of *Williams vs. Stein*, 38 Ind., 39, the supreme court says: "The elector at a popular election must, under the provision of the constitution, vote by ballot, but has the absolute right to exercise the franchise as he pleases, uncontrolled by any person or power. * * But the common understanding in this country certainly is that the term ballot implies secrecy." And the learned judge adds: "I have nowhere found a dictum to the contrary."

The right to vote by ballot has usually been considered an important and valuable safeguard of the independence of the humble citizen against the influence which wealth and station might be supposed to exercise. This object would be accomplished but very imperfectly if the privacy supposed to be secured was defeated by allowing ballots to be marked.

The object of the ballot system is secrecy, and was intended to permit the elector, however humble he may be, to vote his unbiased sentiments. It enables him to vote as he pleases, and be secured then and thereafter against reproach or unimadversion, or any other prejudice on account of his having voted according to his own judgment; and that security consists in shutting up within his own breast all knowledge of the manner in which he bestowed his suffrage. * * * This will enable the voter to escape the influence that might be brought to bear upon him with a view to overbear and intimidate, and thus prevent the real expression of public sentiment. 38 Ind., 39.

The same decision, though rendered before the enactment of our present law, speaking of a law such as the present statute, says: "Such a law would only be declaratory of a constitutional principle that inheres in the system of voting by ballot, and which ought to be inviolable whether declared or not." In the absence of such a law, all devices by which party managers are enabled to distinguish the ballot in the hand of the voter will be practiced, and the spirit of the constitution in securing to the humble citizen the ballot would be defeated. 38 Ind., 40.

When an elector is challenged, which he may be by any other qualified elector, or by any member of the election board, if he will take the oath required in Section 24 of the election act, and be supported by the oath of a resident freeholder, as

therein provided, his vote shall be received, but if after all he is not entitled to vote from any of the causes to challenge, and votes, he shall be liable to a fine of not more than five hundred dollars and not less than ten dollars, be imprisoned in the county jail not more than one year and not less than one month, and be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. Sec. 263, Acts 1881, 230.

If an elector votes or offers to vote in any other precinct or ward other than that in which he resides, he shall be fined not more than five hundred nor less than ten dollars, imprisoned in the county jail not more than a year nor less than one month, and be disfranchised for any determinate period. Sec. 264.

Whoever passes from any other state into this state, and votes or attempts to vote, at any voting precinct or ward in this state, not being at the time a *bona fide* resident of such precinct or ward, shall be fined not more than one thousand nor less than fifty dollars, imprisoned in the state's prison not more than five nor less than one year, and disfranchised for any determinate period. Section 265; Acts 1881, p. 231.

Whoever hires or solicits any person to come from another state into this state, or to pass from any county or from any township into another township, or from any voting precinct or ward into another precinct or ward in this state, for the purpose of voting at any election held therein, such person, so solicited or hired, not being a legal voter in such county, township, precinct or ward, shall be fined not more than one thousand, nor less than fifty dollars, imprisoned in the state's prison not more than five nor less than one year, and be disfranchised. Section 266; Acts 1881, p. 231.

The same penalty attaches in all cases of an elector voting more than once at any election. Section 267.

The same penalty attaches in all cases where any person buys, hires, or offers to hire or buy, or furnishes money or other means to be used, or directs or permits his money or other means to be used, to induce, hire or buy any person to vote, or refrain from voting, for any candidate for any office; or for attempting to induce any person to vote or to refrain from voting for any candidate for any office, by offering such person any reward or favor. Section 268.

The same penalty attaches in all cases of any person who sells, barter, or offers to sell or barter his vote for any candidate for any office, either for money or property or thing of value, or for any promise or favor or hope of reward, given or offered. Section 269.

Whoever furnishes an elector who can not read the English language, with a ticket which such person shall represent to such elector, as containing a name different from the one printed or written thereon, shall be fined not more than one hundred nor less than ten dollars, and disfranchised. Section 275; Acts 1881, 235.

Whoever fraudulently causes or attempts to cause, any elector to vote for a person different from the one he intended to vote for shall be fined not more than one hundred nor less than ten dollars. Section 276.

Whoever, for the purpose of influencing a voter, seeks, by violence or threats of violence, or threats to enforce the payment of any debt, or to eject, or threaten to eject any elector from any house he may occupy, or to begin a criminal prosecution, or to injure the business or trade of an elector, or, if an employer of laborers, or an agent of such employer, threatens to withhold the wages of, or dismiss from service any laborer in his employment, or refuses to allow such employe time to attend at the place of election and vote, shall be fined not more than one thousand nor less than twenty dollars, imprisoned in the state's prison not more than five nor less than one year, and disfranchised. Section 277; Acts 1881, 234.

The same penalty attaches where any person unlawfully, either by force, fraud or other improper means, obtains or attempts to obtain any ballot-box, or any ballots therein deposited, while any election is going on before the ballots are duly counted. Section 278.

A like penalty attaches for destroying or attempting to destroy any ballot-box. Section 279.

While the count is being made, each political party having candidates voted for at such election, is entitled to have, if they so desire it, two electors present with the election board to witness the counting; but such persons shall be orderly and quiet, and shall not interrupt the board in the discharge of their duties. Such witnesses may file their protest in writing, setting

forth any irregularity or fraud they may discover, which protest shall be by the inspector returned with the election returns. Section 33; Acts 1881, p. 490.

Any legal elector who is entitled to vote for any person declared elected by popular vote, may contest such election. Section 66.

A party wishing to contest any election shall file his statement, if the office to be contested is a state office, with the clerk of the circuit court of his county within ten days of the return of such election. Section 70. If, however, the office contested is a county or township office, the statement shall be filed with the county auditor unless the office contested should be that of auditor, when the statement shall be filed with the clerk. Sections 81, 82.

Appeals may be taken from decisions made in contested elections from the county board, if taken within ten days. Section 85. But contest of municipal elections shall be tried before the circuit court. Section 90.

Electors at any election are presumed to know the parties for whom they vote, and hence votes cast for any person for any office, who is ineligible by reason of having served his full constitutional term in such office, can not be considered in such election. *Corson vs. McPhetridge*, 15 Ind., 327.

The term "eligible," as used in the constitution, relates to the capacity of holding, as well as capacity of being elected to, an office. 15 Ind., 331.

When a majority of the ballots at an election were cast for a person not eligible to the office under the constitution, it was held that the ballots cast for such ineligible person were ineffectual, and that the person receiving the greatest number of legal votes, though not a majority of the ballots, was duly elected to the office. *Gulick vs. New*, 14 Ind., 93.

In deciding the above case, the learned judge who wrote the opinion uses this language: "We are reminded that in our form of government the majority should rule, and that if the course indicated (to declare, the majority being against a party, not eligible, that such majority effected the defeat of the opposing party,) is not followed, a majority of the votes may be disfranchised, their voice disregarded, and their rights trampled under foot, and the choice of a minority listened to.

* * Even a majority should not nullify the constitution, or be permitted, at will, to disregard the law. *Id.*

In *Price vs. Baker*, 41 Ind., 572, the court says: Where a majority of the ballots at an election are given to a candidate who is not eligible to the office, the ballots so cast are not to be counted for any purpose. They can not elect the ineligible candidate nor defeat the election of the opposing candidate by showing that he did not receive a majority of the votes cast at such election. It follows that the eligible candidate will receive the office, although less than a majority of the votes are cast for him. See also 33 Ind., 390; 61 Ind., 392; 65 Ind., 392.

ELECTIONS IN CITIES AND TOWNS.

By an act approved March 31, 1881, amending section 8 of an act approved March 17, 1877, it is provided that in cities, each ward shall constitute a separate voting precinct, allowing to the city council the right to make such changes in the places of holding elections or divisions in precincts in such city as public convenience and public good may require, but forbidding any such change to be made without giving due notice at least one month before any election, either by publication in the newspaper published in such city having the largest circulation therein, or by posters put up in four of the most public places in such precinct. Also providing that in town elections there shall be but one place of voting, which shall be centrally located and designated in the notice of such election given by the town clerk. It provides for the appointment of a board of election by the common council of cities and the board of trustees of towns, who shall have all the qualifications of such officers at general elections; and in towns having a population of more than three thousand inhabitants, as shown by the census of 1880, if the public good and convenience require it, have two voting precincts. Acts of 1881, pp. 101, 102.

But by general election law approved April 21, 1881, it is provided: "Section 60. In city and town elections, each ward in which the number of voters does not exceed three

hundred and fifty, shall constitute a precinct. * * * Such council or trustees shall appoint three qualified voters of each precinct, one to act as inspector and two as judges of elections, who shall have been freeholders and resident householders of such precinct for at least one year next preceding any election at which they officiate."

This latter provision seems to be in conflict with the act of March 31, 1881, so far as the town election is concerned, as it gives to the town trustees the right to form a precinct for every three hundred and fifty legal voters of the town, and being the last expressed will of the legislature, repeals all laws in conflict with it, although there is no appealing clause in the latter act.

WILLIAMS *vs.* STEIN (38 Ind., 89).

ELECTION.—*Constitutional Law.—Ballot.*—The second section of the act approved May 13th, 1869, 3 Ind. Stat., 235, requiring "the inspector of any election, on receiving the ballot of any voter, to have the same numbered with figures, on the outside or back thereof, to correspond with the number placed opposite the name of such voter on the poll lists," is void, it being in conflict with section thirteen of article two, of the constitution of this State, which declares, that "all elections by the people shall be by ballot."

SAME.—By the ballot, the constitution secures to the voter the protection and immunity of secrecy. The ballot implies absolute and inviolable secrecy.

APPEAL FROM THE TIPPECANOE CIVIL CIRCUIT COURT.

Pettit, J.—The following is the opinion of Judge Vinton, before whom the case was tried below, and we approve, adopt, and make it our own, believing it needs no improvement, if we were capable of making any.

The complaint alleges, in substance, that on the 11th day of October, 1870, at a general election held pursuant to law for the election of divers officers, the defendant was the duly appointed inspector of elections for a legal precinct of Fairfield township, in Tippecanoe county, known as precinct No. 2, and officiated as such; that on said day the plaintiff was a resident of said township and a duly qualified voter, etc.; that he gave his ballot, which was in all respects a legal ballot, to said de-

fendant as such inspector, and demanded that it should be put into the ballot-box without any distinguishing mark or number being placed upon it; but that defendant, as such inspector, against the protest of plaintiff, unlawfully numbered the same, etc., whereby plaintiff became damaged in his constitutional privileges and franchises, etc.

The defendant has demurred to the complaint for want of sufficient facts to constitute a cause of action against him. The question raised by this demurrer involves the constitutionality of section 2 of an act of the legislature, approved May 13th, 1869, which section reads in these words, viz.:

“It shall be the duty of the inspector of any election held in this State, on receiving the ballot of any voter, to have the same numbered with figures, on the outside or back thereof, to correspond with the number placed opposite the name of such voter on the poll lists kept by the clerks of said election.”

It will be seen that the acts of the defendant, of which plaintiff complains, are not only authorized, but enjoined, by the section quoted; and if the same is valid, there is an end of plaintiff's case. It is claimed, however, that this law is void, because in conflict with section 13 of article 2 of the constitution of Indiana. Section 13 reads thus:

“All elections by the people shall be by ballot; and all elections by the general assembly, or either branch thereof, shall be *viva voce*.”

Here are two modes of election provided for and enjoined; the one applicable to the general assembly, the other to all elections by the people. There is no trouble in determining that the *viva voce* method was intended to secure publicity; and the reason for such publicity is equally manifest. Elections by the general assembly must be *viva voce*; and why? Because the members of that body are agents or representatives of their several constituencies, to whom they are responsible for their votes; and to that end they must vote openly and audibly, that it may be known how they are exercising their delegated authority.

No such reason, if indeed there be any, exists as to the voter at a popular election. He represents nobody, and is responsible to nobody for the vote he may cast. He should vote honestly and intelligently, and under our system he is presumed to do

so; but he has the absolute right to exercise the franchise as he pleases, uncontrolled and unquestioned by any person or power.

Since the one mode provided by the constitution necessarily involves openness, publicity, does not the other, which is used in distinction with it, necessarily imply privacy, secrecy?

“A ballot may be defined to be a piece of paper, or other suitable material, with the name written or printed upon it of the person to be voted for; and where the suffrages are given in this form, each of the electors, in person, deposits such a vote in a box or other receptacle provided for the purpose, and kept in the custody of the proper officers.” Cush. Leg. Assemb. section 103.

In Bouvier's Dictionary, I find this definition of the term: “Ballot. A diminutive ball, *i. e.* a little ball used in giving votes; the act itself of giving votes; a little ball or ticket used in voting privately, and, for that purpose, put into a box (commonly called a ballot-box) or some other contrivance.”

According to an article in the New American Encyclopedia, the “ballot” did not necessarily imply secrecy in Greece; but in Rome, during the republic, it did.

A very able and instructive paper on the subject of the ballot is found in the Ency. Britannica. It may be gathered from that article that in France and Great Britain the term “ballot” implies absolute secrecy.

May, in his excellent work on the Constitutional History of England, thus speaks of the ballot, at page 353, vol. 1:

“The ballot is another question repeatedly debated in Parliament, and a popular topic at the hustings, at public meetings, and in the newspaper press. No sooner had the reform act passed, than complaints were made that the elective franchise, so recently enlarged, could not be freely exercised. It was said that the landlords in the counties, and wealthy customers in towns, coerced the free-will of the electors and forced them to vote against their opinions and consciences. As a protection against such practices, the necessity of secret voting was contended for. To give the franchise without the means of exercising it, was declared to be a mockery.”

We are also informed by this work, that the right to vote by ballot was one of the five points of the great “People's

Charter" of 1839. A petition signed by 1,230,000 persons, was presented to the House of Commons, praying the right to vote by ballot.

The common understanding in this country certainly is, that the term "ballot" implies secrecy. I have nowhere found a *dictum* to the contrary. The Supreme Court of Pennsylvania, in a case involving the validity of an election, held, that an eagle printed on the ticket as a party badge, violated a certain by-law, "since it deprived a voter of that secrecy to which he was entitled in the exercise of his franchise, so as to avoid the odium and violence of party prejudice." 3 S. & R., 29.

In the case of the People *vs.* Pease, 27 N. Y. 45, which was an action in the nature of a *quo warranto*, *Denio*, Chief Justice, uses the following language: "I have already alluded to the policy of the law providing for a secret ballot. The right to vote in this manner has usually been considered an important and valuable safeguard of the independence of the humble citizen against the influence which wealth and station might be supposed to exercise. This object would be accomplished but very imperfectly, if the privacy supposed to be secured was limited to the moment of depositing the ballot. The spirit of the system requires that the elector should be secured then, and at all times thereafter, against reproach or animadversion, or any other prejudice, on account of having voted according to his own unbiased judgment; and that security is made to consist in shutting up within the privacy of his own mind all knowledge of the manner in which he has bestowed his suffrage."

Cooley, J., in his recent work on "Constitutional Limitations," discusses this subject. "The mode," says he, "of voting in this country, at all general elections, is almost universally by ballot. The distinguishing feature of this mode of voting is, that every voter is thus enabled to secure and preserve the most complete and inviolable secrecy in regard to the persons for whom he votes, and thus escape the influences which, under the system of oral suffrages, may be brought to bear upon him with a view to overbear and intimidate, and thus prevent the real expression of public sentiment.

"In order to secure as perfectly as possible the benefits anticipated from this system, statutes have been passed, in

some of the States, which prohibit ballots being received or counted unless the same are written or printed upon white paper, without any marks or figures thereon intended to distinguish one ballot from another. These statutes are simply declaratory of a constitutional principle that inheres in the system of voting by ballot, and which ought to be inviolable whether declared or not. In the absence of such a statute, all devices by which party managers are enabled to distinguish ballots in the hand of the voter, and thus determine whether he is voting for or against them, are opposed to the spirit of the constitution, inasmuch as they tend to defeat the design for which voting by ballot is established.

"The courts have held that a voter, even in case of a contested election, can not be compelled to disclose for whom he voted. Public policy requires that the veil of secrecy should be impenetrable, unless the voter himself voluntarily determines to lift it; his ballot is absolutely privileged; and to allow evidence of its contents, when he has not waived the privilege, is to encourage trickery and fraud, and would, in effect, establish this remarkable anomaly, that, while the law from motives of public policy establishes the secret ballot with a view to conceal the elector's action, it at the same time encourages a system of espionage, by means of which the veil of secrecy may be penetrated and the voter's action disclosed to the public." Cooley's Const. Lim., 604; 16 Mich., 283; 27 N. Y., 81.

The question has also undergone investigation in the Supreme Court of Vermont. In *Temple vs. Mead*, 4 Vt., 535, the court says: - "In this country, and indeed in every country where officers are elective, different modes have been adopted for the electors to signify their choice. The most common modes have been, either by voting *viva voce*, that is, by the elector openly naming the person he designates for the office, or by ballot. * * * The principal object of this last mode, is to enable the elector to express his opinion secretly, without being subject to be overawed, or to any ill will or persecution on account of his vote for either of the candidates who may be before the public."

It is believed that these authorities establish, beyond doubt, that the ballot implies absolute and inviolable secrecy, and that

the principle is founded in the highest considerations of public policy.

When our present constitution was formed, voting by ballot was in vogue in nearly every state in the union. That mode of voting had been known and well understood for centuries. The term ballot, as designating a mode of election, was then well ascertained and clearly defined. The eminent framers of the constitution certainly employed this term with a full knowledge of its meaning. Many of the most distinguished members of the constitutional convention of 1850 were members of the legislature of 1852, the first that met under the present constitution. That they regarded the ballot system as securing inviolable secrecy, is clearly shown by the following law which they then helped to enact:

“If any judge, inspector, clerk or other officer of an election, shall open or mark, by folding or otherwise, any ticket presented by such elector at such elections, or attempt to find out the names thereon, or suffer the same to be done by any other person, before such ticket is deposited in the ballot-box, he shall be fined in any sum not exceeding one hundred dollars.” . 2 G. & H., 473, sec. 60.

If the constitution secures to the voter, in popular elections, the protection and immunity of secrecy, there can be no doubt that section 2 of the act of 1869, which authorized the inspector to number ballots, is clearly in conflict with it and is void.

I am not unmindful of the rule that all doubts are to be solved in favor of the constitutionality of legislative enactments. This rule is well established and is founded in the highest wisdom. But my convictions are clear that our constitution was intended to, and does, secure the absolute secrecy of a ballot, and that the act in question, which directs the numbering of tickets, to correspond with the numbers opposite the names of the electors on the poll lists, is in palpable conflict not only with the spirit, but with the substance of the constitutional provision.

This act was intended to, and does, clearly identify every man's ticket, and renders it easy to ascertain exactly how any particular person voted. That secrecy which is esteemed by all authority to be essential to the free exercise of suffrage, is

as much violated by this law as if it had declared that the election should be *vira voce*.

We add one authority, Wharton's Law Dictionary.

"Ballot. To vote for or choose a person into an office by means of little balls, of several colors, which are put into a box privately, according to the inclination of the chooser or voter; or by writing the name or names of the candidates upon small pieces of paper and rolling them up, so that they can not be read, which are put into a box; and when the time limited for the election is over, an indifferent person takes them out one by one, and upon reading the name or names, somebody takes down the number of votes, the greater of which is declared duly elected."

The demurrer was overruled, and exception taken. The appellant refused to answer over, and the cause was submitted to the court for trial. Finding and judgment for the plaintiff for one hundred and fifty dollars. The only error assigned is the overruling of the demurrer to the complaint. This was not error.

The judgment is affirmed, at the costs of the appellant

CARSON *vs.* McPIETRIDGE (15 Ind., 327).

The disabling provision in Section 2, Article VI., of the new constitution, which ordains that "no person shall be eligible to the office of clerk, recorder or auditor more than eight years in any period of twelve years," literally applies to periods of time under the new constitution, and not to terms of office.

The tenth subdivision of the schedule to the new constitution, construed in reference to the disabling clause in Section 2 of Article VI., aided by a recurrence to the history of the time of the adoption of the new constitution, shows that it was the intention of the convention that framed it, that those officers who held over under the new, should be regarded as doing so by virtue of their popular election under the old constitution; and that such holding, as to term, should be regarded as a holding under the new constitution.

The time served under the new constitution, pursuant to an election under the old, must be regarded as a part of the eight years to which a clerk is limited under the former.

The limitation to eight years in Section 2 of Article VI. of the new constitution, does not embrace time served in either of the offices named in said Section 2, under a *pro tempore* appointment, or a simple holding over to fill a vacancy, according to the provisions of Section 11, Article II, of the same.

The term "eligible," as used in the new constitution, relates to the capacity of holding as well as to the capacity of being elected to an office.

As the disability in this case was one of which the voters were bound to take notice, and a general election, fixed by law, is vitiated by a failure of the officer to make the publication required by law, the successor, fairly elected is entitled to the office.

APPEAL FROM THE MONROE CIRCUIT COURT.

Perkins, J.—McPhetridge was elected clerk of the Monroe circuit court, in 1845, for the term of seven years. On November 1, 1851, the new constitution of the state took effect, being about a year before the expiration of the term for which McPhetridge had been elected.

At the October election, in 1852, McPhetridge was re-elected clerk for the term of four years.

At the October election, in 1856, he was again elected clerk, as he claims, for the term of four years, which would expire in 1860.

At the October election, 1859, Carson was voted for for clerk, and, as he claims, elected the successor of McPhetridge, with the right to take immediate possession of the office.

He insists that the right of McPhetridge to hold the office ceased at the expiration of eight years, from November 1, 1851; being one year before the expiration of the term of four years for which he claims to have been last elected. Carson insists that the new constitution effected such curtailment of his term.

Section 2 of Article VI. of that instrument ordains, that there shall be elected, in each county, by the voters thereof, at the time of holding general elections, a clerk of the circuit court, etc., who shall continue in office four years; and further, "and no person shall be eligible to the office of clerk, recorder or auditor more than eight years in any period of twelve years."

McPhetridge contends that this clause of the constitution applies only to time and terms of office filled by election after the new constitution took effect. Carson contends that it applies to time and terms actually served after the new constitution came into operation, though under elections which took place under the old constitution.

The question has been thoroughly discussed by counsel, upon general principles, but no authority bearing upon it has been cited; and we have patiently considered it, with a frequent vi-

bration of opinion, and now come, with some hesitation to a final conclusion.

Literally, the disabling provision applies to periods of time, not to terms of office; and, of course, it applies to time under the present constitution, of which it is a part, as it specifies no other. It says "no person," not no such person as has been elected under the new constitution, etc., shall, etc. But we can not determine its meaning by a reference to the section alone of the constitution in which it is found; because, from that section, we can not know that any person will hold office under the new constitution by any other mode than election, at the general elections the section refers to. We must, then, look to other sections of the constitution.

It is provided in the schedule as follows:

"Tenth. Every person elected by popular vote, and now in any office which is continued by this constitution, and every person who shall be so elected to any such office before the taking effect of this constitution (except as in this constitution otherwise provided), shall continue in office until the term for which such person has been or may be elected, shall expire: *Provided,* That no such person shall continue in office, after the taking effect of this constitution for a longer period than the term of such office in this constitution prescribed."

How is this provision to be construed in reference to the disabling clause contained in Section 2 of Article VI. above quoted? A recurrence to the history of the time of the adoption of the constitution may slightly aid in answering this inquiry. A portion of the officers, under the old constitution, held by popular election, and a portion by mode of appointment. The terms of some of the officers, also, were somewhat lengthy. One object of the new constitution was to make all, or nearly all, the officers elective by the people, and to shorten the terms of office. Influenced by these views, the convention provided, in the subdivision of the schedule quoted, that those persons, then in an office continued in the new constitution, who had come in by popular election, the mode adopted by that constitution for filling the offices, should continue to hold under that constitution, as they had been brought into office by the popular mode prescribed by it; but subject to the doctrine of supposed reform, by shortening the terms of office, upon which the con-

vention were acting. Hence the provision, that the officers of whom we are speaking should be limited to two or four years, the terms under the new constitution.

Hence, also, the absence, in the constitution, of a provision continuing in office those who had not come in by popular election.

By these considerations, we are led to the conclusion, that it was the intention of the constitutional convention, that those officers who held over under the present constitution, should be regarded as doing so by virtue of their popular election, and not of appointment by the convention; and that such holding should be further regarded, as to term, as a holding under the limitations of the present constitution. See *Jones vs. Cavins*, 4 Ind., 305; *The Governor vs. Nelson*, 6 *id.*, 496; *Coffin vs. The State*, 7 *id.*, 157.

The next question is, must the time served under the new constitution, pursuant to an election under the old, be reckoned as a part of the eight years to which a clerk is limited by the new constitution? It might be difficult to so decide upon Section 2 of Article VI. alone; but it would seem that it was the intention of the convention that it should be so reckoned. That body, by the constitution, had limited the clerk to eight years of continuous service; but there was a provision in the constitution, to meet a contingency that might happen requiring a *pro tem.* appointment to fill a vacancy in such office; and the convention seemed to have been of opinion that the limitation to eight years of service would embrace such time of *pro tem.* service as a part of the eight years; and hence, as they did not so intend, they ordained an express exception in Section 11 of Article II., which is in these words, viz.: "In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of years continuously, an appointment, *pro tempore*, shall not be reckoned a part of that term."

They also expressly provided for the case of holding over till a successor was elected, etc., to prevent a temporary vacancy.

Now, the clause just quoted from Section 11, has more than the weight of a simple exception to a general rule, implying, of course, that cases not specially excepted are to be governed by it. It furnishes by its language, a clear exposition of what the

convention meant by Section 2 of Article VI.; it shows that the limitation, the disability imposed, attached to period of service under the new constitution, not to terms of election. It, in effect, declares, that that section means that "an office shall not be filled by the same person more than a certain number of years continuously," under this constitution; and then excepts *pro tem.* appointments, and cases of holding over to prevent vacancies. But, as we have seen, those officers who continued under the new from the old constitution, by virtue of their popular elections, are not considered as holding by *pro tem.* appointments, or a simple holding over to prevent a vacancy; and hence, do not fall within the exceptions.

The term eligible, as used in our constitution, relates to capacity of holding, as well as capacity of being elected to, an office.

The fact that the effect of this construction will be to terminate the holding of a portion of the first occupants, under the new constitution, in the middle of a term, we do not think is entitled to much weight. It produces no greater inconvenience than death, removal, or resignation is frequently doing, and is as well provided for as such cases are. Suppose the constitution rendered a person ineligible to hold an office after he had arrived at a certain age, say sixty years, he might be elected at fifty-nine, and serve a year, and then be compelled to vacate his office.

As the disability in this case was one of which the voters were bound to take notice, and a general election, fixed by law, is not vitiated by a failure of the officer to make the publication required by statute, the successor, fairly elected, is, under the decision in the case of *Gulick vs. New*, 14 Ind., 93, entitled to the office. See P. S. to Letter XIX. of Woodfall's Junius.

It may be observed, that the question in this case is not one of prospective or retrospective operation of the constitution, but one as to the meaning of, or the subject matter to which, a particular clause applies. It is prospective in its operation, with either meaning or application; prospective as to time of service in one case, or to time of election in the other.

Per Curiam.—The judgment below is reversed, with costs. Cause remanded for further proceedings, in accordance with this opinion.

GULICK *vs.* NEW.

The clerk of the circuit court is merely a ministerial officer, and in respect to the approval of official bonds, he has no discretion except to determine whether the security offered is sufficient.

The governor may determine, even against the decision of a board of canvassers, whether an applicant is entitled to receive a commission or not, where the objection to his right to receive it rests upon the ground that a constitutional prohibition is interposed.

If the governor should ascertain that he has commissioned a person who is ineligible to the office, he may issue another commission to the person legally entitled thereto.

When a majority of the ballots at an election were for a person not eligible to the office under the constitution, it was *held* that the ballots cast for such ineligible person were ineffectual, and that the person receiving the greatest number of legal votes, though not a majority of the ballots, was duly elected, and entitled to the office.

The mayor of a city, under the general law, has jurisdiction as a judicial officer throughout the county; and the voters of the county are, therefore, chargeable with notice of his ineligibility, under the constitution, to any office other than a judicial one, during the term for which he was elected.

A writ of mandate is the proper remedy against a clerk for refusing to approve an official bond.

BROWER *vs.* O'BRIEN.

In the case of *Brower vs. O'Brien*, 2 Ind. Reports. The supreme court say, in commenting on the duties of the board of canvassers (2 Ind., p. 429): "The statute prescribing the duties of the board of canvassers, makes the clerk of the circuit court of the proper county, *ex officio*, the clerk of said board. A statement is required to be drawn up by said clerk containing the names of the persons voted for, the office for which such person

was voted to fill, the number of votes given in each township to each of such persons, the number of votes given to each in the county, and the aggregate number of votes given altogether as ascertained from the poll books.

The board of canvassers are also required to declare the person having the highest number of votes given for each office to be filled by the votes of a single county, duly elected to such office, and such declaration is to be certified by the board in the statement thus required to be drawn up by the clerk.

It is then made the duty of the clerk, in all cases in which the persons elected to offices in any county are commissioned by the governor, and clerks of the circuit courts are so commissioned, unless notice shall be given that the election of such persons will be contested, after ten and within twenty days from the time said board of canvassers shall have made return of such election, to make out a certified statement under the seal of his said court, specifying the number of votes given to each person voted for for each office, and who has, by said board of canvassers been declared duly elected thereto; and to transmit the same by mail to the secretary of state at Indianapolis.

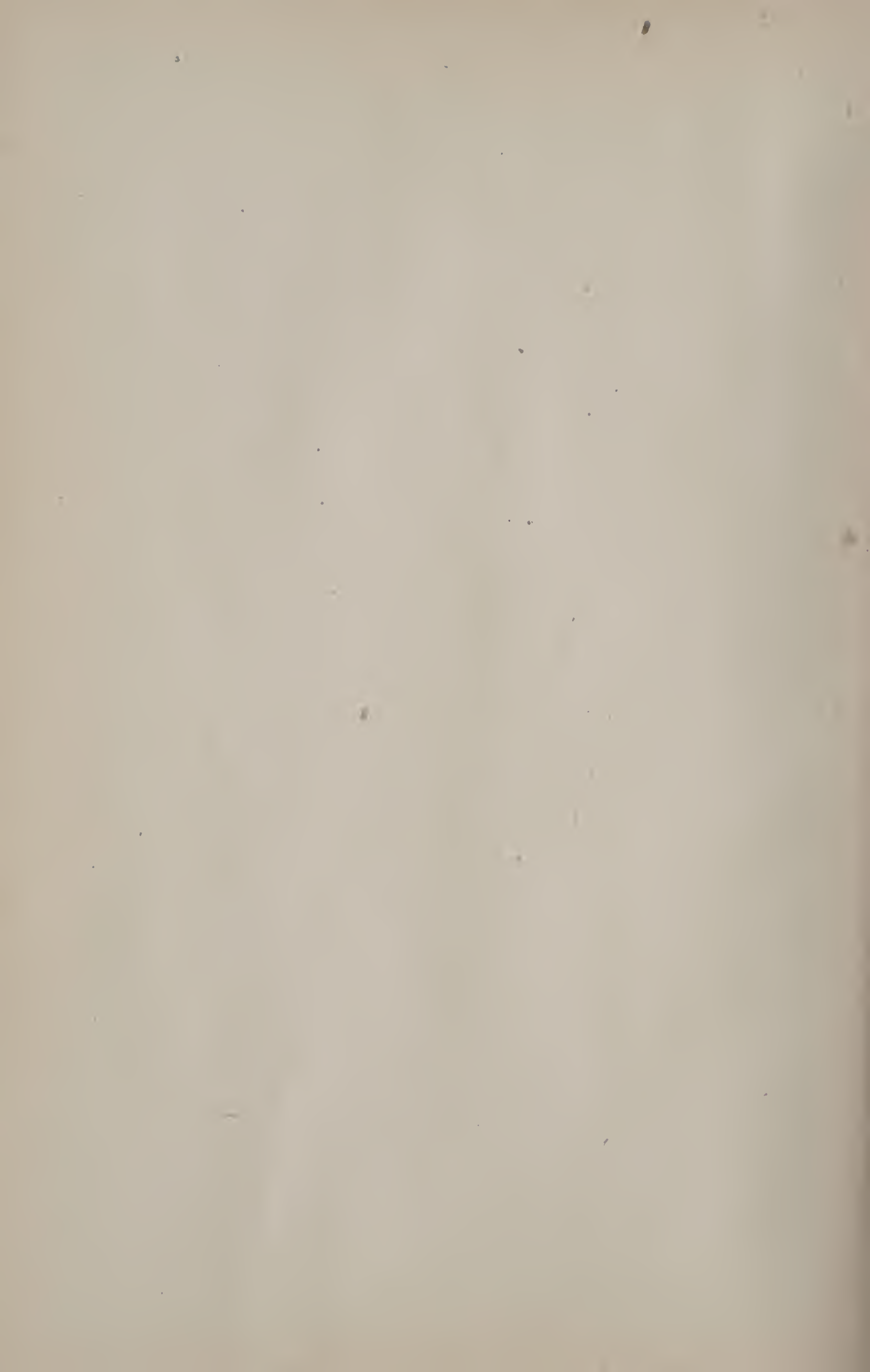
It is also provided that no commission shall be withheld by the governor, on account of any defect or informality in the return of any election to the office of secretary of state by any clerk of a circuit court, if it can, with reasonable certainty, be ascertained from such return what office is intended, and who is entitled to such commission. R. S. c. 5, a. 5 and 6.

The duties of the clerk are here plainly marked out; but it is contended it was not his duty, in this case, to make a return of the election held for a clerk of the circuit court, because no person was, by the board of canvassers, declared positively and unconditionally elected to that office.

With regard to this point it may be observed that the duties of both the board of canvassers and the clerk, in making the statement and declaration required, are purely ministerial. It is not within their province to consider or determine any questions relative to the validity of the election held or of the votes received by the persons voted for. They are simply to cast up the votes given for each person, from the proper election documents, and to declare the person who, upon the face of those

documents, appears to have received the highest number of the votes given, duly elected to the office voted for.

The material fact to be declared by the board of canvassers is, therefore, who received the highest number of votes for the offices voted for. In declaring this they substantially declare such persons duly elected, so far as their declaration is of any consequence. This much is declared in the statement set out in the defendant's plea. That part of the statement making the declaration of the board of canvassers dependent on a question of vacancy in the office, was improperly inserted; but it may be regarded as merely surplusage, and it affords no excuse to the clerk for his neglect or refusal to make a return of the election to the secretary of state.



LAWS GOVERNING ELECTIONS.

CHAPTER XXIII.

AN ACT to amend section eight of the act entitled "An act to prescribe certain powers and duties of county commissioners, township trustees, city councils, and trustees of towns, in relation to elections; also prescribing certain powers and duties of inspectors and judges of elections, and penalties for frauds in the performance of their official duties, to prevent illegal and fraudulent voting; prescribing penalties for the violation of this act," and repealing an act entitled 'An act repealing sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one and twenty-two' of an act entitled 'An act to provide for the registry of voters, and to declare their residence, and to punish fraudulent practices touching elections, and defining the duties of certain officers therein named, and the form of the ballots, and providing compensation for the services of such officers, approved March 11, 1867, and prescribing further duties of the officers of election, and providing for the appointment of the necessary officers and clerks for holding such elections,' approved May 13, 1869, approved March 14, 1877, and declaring an emergency.

[APPROVED MARCH 30, 1881.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana,* That section eight of an act entitled "An act to prescribe certain powers and duties of county commissioners, township trustees, city councils and trustees of towns in relation to elections; also, prescribing certain powers and duties of inspectors and judges of election, and penalties for frauds in the performance of their official duties, to prevent illegal and fraudulent voting, prescribing penalties for the violation of this act, and repealing an act entitled 'An act repealing sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty and twenty-two,' of an act entitled 'An act to provide for the registry of voters

Act amended.

and to declare their residence, and punish fraudulent practices touching elections, and defining the duties of certain officers therein named, and the form of the ballots, and providing compensation for the services of such officers, approved March 11, 1867, and prescribing further duties of the officers of elections, and providing for the appointment of the necessary officers and clerks for holding such elections," approved May 13, 1869, approved March 14, 1877, be, and said section is hereby

Each ward a separate voting place.

Common council may change places of holding elections.

Officers of election.

In town election, one place of voting.

Officers of election.

Towns to have two places of voting, when.

Emergency.

amended so as to read as follows: Section 8. In city elections each ward shall constitute a separate voting precinct: *Provided*, That the common council of any city may make such changes in places of holding elections, or divisions in precinct in such city as public convenience and the public good may require, but no such change or divisions shall be made without giving due notice at least one month before any election, either by publication in the newspaper published in such city having the largest circulation therein, or by posters put up in four of the most public places in such precinct. Such common council shall appoint three qualified voters in each precinct, one to act as inspector, and two as judges of elections, who shall have been freeholders and resident householders in such precinct at least one year next preceding any city election at which they may officiate. Such inspectors and judges, when so appointed, shall constitute a board of elections, which shall have all the powers and perform all the duties of boards of election as hereinbefore specified. In town elections there shall be but one place of voting, which shall be centrally located in the town and designated in the notice of such election given by the town clerk. The board of town trustees shall appoint three qualified voters who shall have been freeholders and resident householders in the town at least one year next preceding any town election at which they may officiate, one to act as inspector, and two as judges of elections, and such inspector and judges, when so appointed, shall constitute a board of elections as in the case of cities in this section provided: *Provided*, That the boards of trustees of towns having a population of more than three thousand inhabitants, as shown by the census of 1880, may, if public convenience and the public good shall seem to require it, establish two places of voting in such towns.

SEC. 2. An emergency exists for the immediate taking effect of this act, therefore the same shall be in force from and after its passage.

CHAPTER XVII.

AN ACT providing for the submission to the electors of the state of Indiana for ratification or rejection the constitutional amendments proposed to and adopted by the general assemblies of said state at the sessions of 1877 and 1879, prescribing certain duties of officers of election and others, providing penalties for violations thereof, and repealing all laws in conflict therewith, and declaring an emergency.

[APPROVED FEBRUARY 21, 1881.]

WHEREAS, Each of said amendments was agreed to Preamble.
by a majority of all the members elected to each of the two houses of the said general assembly, in which they were proposed as aforesaid, and entered with the yeas and nays thereon on their journals, and referred to the general assembly to be chosen at the then next following general election; and,

WHEREAS, In the general assembly next afterward chosen, to-wit, in the general assembly chosen at the general election held in October, 1878, and which held its sessions in the year 1879, each of said proposed amendments was agreed to by a majority of all the members to each house; and,

WHEREAS, Said general assembly last named, by an act entitled "An act providing for the submission to the electors of the state of Indiana for ratification the constitutional amendments proposed to and adopted by the general assemblies of said state at the sessions of 1877 and 1879, prescribing certain duties of officers of election and others, providing penalties for violations thereof, and other provisions relating to the subject matter, which was approved March 10, 1879, provided, as was supposed, for the submission of each and every one of said amendments so proposed to the electors of the state; and,

WHEREAS, It was afterwards decided by the Supreme Court that said act was insufficient in its provisions to make a valid submission of said proposed amendments to the electors of the state, and that said attempted submission was void; therefore,

WHEREAS, In the general assembly of the state of Indiana elected at the general election held in October, 1876, and which held its sessions in the year 1877, there was proposed by the senate of said general assembly seven separate amendments of the constitution of this state, which amendments were in the words and figures

following, and designated in the resolutions by which they were proposed by the numbers following, respectively, to-wit:

Amendment No. 1.

Amendments
to be submitted

Section 2
Article II.

Residence
voter.

Amend Section 2 of Article II. so as to read as follows :
Section 2. In all elections, not otherwise provided for by this constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the state during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this state during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.*

Amendment No. 2.

Section 5 of second article. By striking out the words, "No negro or mulatto shall have the right of suffrage," contained in section 5 of the second article of the constitution; and

Amendment No. 3.

Section 14 of
second article.
Election in No-
vember.

Amend section 14 of the second article to read : Section 14. All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law: *Provided*, That the general assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for, and shall also provide for the registration of all persons entitled to vote.†

Amendment No. 4.

Sections 4 and 5
of Article IV.

Strike the word "white" from sections 4 and 5 of article 4.

* 69 Ind., 505.

† Acts 1881, p. 482.

CHAPTER XLVII.

AN ACT concerning elections, and the contest thereof.

[APPROVED APRIL 21, 1881.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana,* That a general election shall be held on the first Tuesday after the first Monday in November in the year one thousand eight hundred and eighty-two, and biennially thereafter on the same day, at which election all existing vacancies in office, and all offices, the terms of which will expire before the next general election thereafter, shall be filled, unless otherwise provided by law.

General election, when held, what offices filled.

SEC. 2. The clerk of the circuit court shall, at least twenty days before such election, certify to the sheriff of his county what officers are to be elected; and such sheriff shall give fifteen days' notice thereof, by posting up at all usual places of holding such elections, a copy of such certificate, and by one publication thereof in some newspaper of his county, if any there be, and by delivering a copy thereof to the township trustee of each township within the county. But no election shall be invalidated by the failure of such clerk or sheriff in the performance of any of the duties enjoined by this section.*

Certificate of clerk, notice of sheriff.

Failure to give notice.

SEC. 3. All elections shall be free and equal, and in all elections every male citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the state during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this state during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside.

Qualification of elector.

Residence of voter.

Foreigners.

SEC. 4. Every person undergoing a sentence of imprisonment on conviction for any felony or misdemeanor,

Who disfranchised.

shall be disfranchised during the period of such imprisonment.

Soldier, sea-
man, etc., non-
residents, etc.

SEC. 5. No soldier, seaman or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State in consequence of having been stationed within the same; nor shall any such soldier, seaman or marine have the right to vote.

When resi-
dence not lost:

SEC. 6. No person shall be deemed to have lost his residence in the state by reason of his absence, either on business of this state or of the United States.

Electors free
from arrest,
when.

SEC. 7. In all cases, except treason, felony and breach of the peace, electors shall be free from arrest, in going to elections, during their attendance there, and in returning from the same.

Places of hold-
ing elections.

SEC. 8. The county commissioners of each county in this state shall, where the same has not been already done, at their first session after the taking effect of this act, or as soon thereafter as practicable, designate places of holding elections and precincts, which shall be described by definite boundaries. Such board of commissioners shall designate at least one place of holding elections in each township, and every township in which only one place of holding elections is designated shall constitute a precinct. Each township shall constitute at least one precinct, and when public convenience requires it, a township may be divided into two or more precincts, and there shall be but one voting place in a precinct. No precinct shall contain more than three hundred and fifty voters, as near as may be, to be ascertained and determined by the board, as nearly as possible, by the official returns of the last general election, and in forming voting precincts, regard shall be had to natural divisions, density of population, and the convenience of voters.

Forming pre-
cincts.

Number voters
in precinct.

Boundaries of
precinct, when
changed.

SEC. 9. The county commissioners of any county may change the boundaries of any precinct within such county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change any place of holding elections whenever public convenience or the public good may require it: *Provided*, That no such change, division or consolidation shall be made after the June term of said commissioners next preceding any election: *And provided further*, That no such change, division or consolidation shall be valid without giving due notice at least one month before any election, either by publication in the newspaper having the largest circulation in each county, or by

Notice of
change.

posters put up in four of the most public places in each precinct: *And provided further*, That no precinct shall be enlarged so as to contain more than three hundred and fifty voters, as near as may be.

SEC. 10. Township trustees shall, by virtue of their office, be inspectors of election in the precincts in which they respectively reside, and shall, prior to the opening of the polls in such precinct, appoint as judges of election two qualified voters of such precinct, who have been freeholders and resident householders therein for at least one year next preceding such election, and who are members of different political parties, and of the parties which cast the highest number of votes in such precinct at the next preceding general election, and such judges, together with the inspector, shall constitute a board of election. No person shall be eligible as a member of the board of election who has anything of value bet or wagered on the result of such election, or who is a candidate to be voted for at such election, or who is of kin to any candidate at such election. If at any time before or during an election it shall be made to appear to any inspector, by the affidavit of two or more qualified electors of the precinct, that either of the judges is disqualified under the provisions of this act, he shall at once remove such judge, and fill the place with a qualified person, and in case such disqualified judge shall have taken the oath of office hereinafter prescribed, the inspector shall place such oath and the affidavit before the next grand jury of the county.*

Township trustee inspector.

Appointment of judges.

Qualification of election board.

SEC. 11. Whenever any board of commissioners shall designate more than one precinct in any township, they shall, at the June term of said board next preceding any election, appoint in each additional precinct, as inspector of such election, some qualified voter of such precinct, who shall have been a freeholder and a resident householder in such precinct for at least one year next preceding such election. Such board of commissioners shall fill all vacancies that may occur at any regular or called session of the board, and said inspector shall, previously to the time of opening the election at any precinct, appoint as judges of said election two qualified voters of such precinct, who shall have been freeholders and resident householders in such precinct for at least one year next preceding such election, such judges to be members of different political parties, and when so appointed, such judges, together with the

More than one precinct; vacancies; officers.

Filling vacancies in office of inspector.

* 47 Ind., 127; 21 Ind., 499; 11 Ind., 14; 12 Ind., 330.

inspector, shall constitute a board of election: *Provided*, There are different political parties in the precinct: *And provided further*, That such appointments shall be made from the political parties having cast the highest number of votes in such precinct at the last preceding general election.

Clerks of elections.

SEC. 12. Such board of election shall appoint as clerks two qualified voters of such precinct, who shall belong to different political parties: *Provided*, There are different political parties in such precinct: *And provided further*, That such appointment may be made from the parties casting the highest number of votes at the last preceding general election.

Blank forms of poll books and election returns, etc.

Auditor to furnish pollbooks.

SEC. 13. The auditor of each county in the state shall make out and cause to be delivered to the inspectors of the several election precincts in their respective counties, at least ten days previous to any election, a suitable number of blank forms of poll-books, containing one column headed "names of voters," and an additional column headed "number of votes," and also forms of election returns, with the proper captions, forms of oaths, and forms of certificates, and tally papers necessary to be used in all elections hereafter held in this state. The county commissioners of each county shall allow said auditor or other county officer a reasonable compensation for all services by them rendered, as required by this act, and to be paid out of the treasury of their respective counties.

When inspector and judges to attend place of holding election; absence.

SEC. 14. Each inspector and judge of elections shall attend at the place of holding elections in his township or precinct at or before eight o'clock in the morning of the day of election, and should such inspector not appear at that hour, or if from any cause there should be a vacancy in the office of inspector, or none has been appointed, then the qualified voters of that township or precinct who may be present shall appoint by a majority *viva voce* as the inspector of such election, some qualified voter of such township or precinct, who shall have been a freeholder and resident householder in such township or precinct for at least one year next preceding such election. And said inspector so chosen shall, previously to the time of opening said election, appoint as judges of such election two qualified voters of such township or precinct who shall have been freeholders and resident householders therein for at least one year next preceding such election. Such judges shall be members of different political parties whenever there are different political parties in such township or pre-

Politics of board.

cinet; and such appointment shall be made from the two political parties casting the highest number of votes therein at the last preceding general election. Such board of election so constituted shall appoint as clerks two qualified voters of such township or precinct, who shall belong to different political parties, in the same way that the judges are appointed.

SEC. 15. Before any election shall be opened, the inspector and judges shall each make oath to support the constitution of the United States, and of this state, to faithfully and impartially discharge the duties assigned by law; that they will not knowingly permit any person to vote who is not qualified, and not knowingly refuse the vote of a qualified elector, or cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of the qualifications of such person as an elector, and that they are now *bona fide* residents and freeholders in the precinct where appointed, and have been such residents and freeholders of the township in which such precinct is situated for more than one full year next preceding such election, which oath shall be in writing or printed, and shall be subscribed and executed before some person authorized by law to administer oaths, which officer shall attach thereto his jurat, and such oath shall then be attached to the poll book, and with it returned to the clerk's office of his county as hereinafter provided.

Oath and duty
of inspector
and judges.

SEC. 16. If no person present is authorized by law to administer the oath of office, the inspector shall administer the same to the judges, and one of such judges shall then administer said oath to the inspector.

Oath adminis-
tered, by whom.

SEC. 17. The inspector shall be chairman of such board, and before the reception of any votes, shall administer an oath to each of the clerks of the election, that they will faithfully discharge their duties. After the organization of the board of judges, the inspector may administer all necessary oaths which may be required in the discharge of their duties, and all oaths shall be written or printed and shall be signed by the persons making such oaths in the presence of such board of election, and the person administering such oaths shall affix his jurat thereto, and said affidavits shall be attached to and returned with the poll lists to the office of the county clerk.

The inspector
chairman of
board; to ad-
minister oaths.

SEC. 18. The board of county commissioners of each county shall provide, at the expense of the county, a sufficient number of ballot boxes to furnish one to each precinct, which ballot box shall have at least two locks

Ballot boxes.

to each box, and be otherwise so constructed as to contribute towards the prevention of fraud.

Opening in ballot box; inspection; key.

SEC. 19. An opening shall be made in the lid of each box sufficient only for a single ballot, and at the time the election is opened the inspector and judges shall see that there are no ballots in the box before the voting begins, and shall thereupon securely lock the box, and give one key to one of the judges, who is in politics opposed to the inspector, the inspector retaining the other key, and the same shall not again be opened until the polls are closed, and the board are ready to immediately proceed with the counting.

Opening and closing election.

Close election.

SEC. 20. The election shall be opened in the forenoon, between the hours of eight and ten o'clock, and continue open until four o'clock in the afternoon, after which the board may close the election at any time, when all the electors have voted, or when fifteen minutes have passed without a vote having been tendered; but the polls shall in no case be kept open after six o'clock of the afternoon, and the polls shall not be closed after four o'clock and before six o'clock, except by the unanimous consent of all the members of the election board, but whenever the polls are closed, proclamation must be made of the fact of such closing by the inspector, to the people outside, in a loud and audible tone of voice, and a minute of such proclamation, and of the time when the same was made, must be entered on the tally paper by the clerks, and after such minute has been entered, no more votes shall be received.

Where elector to vote.

SEC. 21. Each elector shall vote by ballot, in the precinct wherein he resides.*

Proclamation of opening election.

SEC. 22. Before receiving the ballot of any elector, the board of election shall cause to be proclaimed that such election is opened.

Ballots, kind and form of.

SEC. 23. All ballots which may be cast at any election hereafter held in this State, shall be written or printed on plain white paper, of a uniform width of three (3) inches, without any distinguishing mark or other embellishment thereon, except the name of the candidates and the office for which they are voted for.†

Challenge of person attempting to vote.

SEC. 24. Any person offering to vote may be challenged as unqualified by any qualified voter of such township or precinct, and in all cases the inspector and each judge shall challenge any person offering to vote whom he shall know or suspect not to be qualified; and

* 38 Ind., 89.

† 29 Ind., 308; 35 Ind., 275; 39 Ind., 363.

if the person so challenged insists upon voting, and if the challenge be not withdrawn, the inspector of such election, or one of the judges thereof, shall administer to him, if he claim to be a citizen of the United States, the following oath: “You do swear (or affirm, as the case may be) that you are a citizen of the United States, that you are over twenty-one years of age, to the best of your information and belief, that you have been a *bona fide* resident of this state for six months immediately preceding this election; that you have resided in the township sixty days, and in the ward or precinct (as the case may be) thirty days, and are now a *bona fide* resident of this precinct; that you are generally known by the name in which you now desire to vote, and that you have not voted and will not vote in another precinct at this election.” And if such person does not claim to be a citizen of the United States the inspector of such election, or one of the judges thereof, shall administer to him the following oath: “You do swear (or affirm, as the case may be), that you have resided in the United States one year, and have declared your intention to become a citizen thereof in conformity with the laws thereof; that you are over twenty-one years of age, to the best of your information and belief; that you have been a *bona fide* resident of this state for six months immediately preceding this election; that you have resided in the township sixty days and in the ward or precinct (as the case may be) thirty days, and are now a *bona fide* resident of this precinct; that you are generally known by the name in which you now desire to vote, and that you have not voted, and that you will not vote in any other precinct at this election.” And in addition to such oaths of such persons whose votes are challenged, whether they claim to be citizens or not, the following oath or affirmation of some qualified voter in such precinct who has been a freeholder and a resident householder in such precinct for at least one year next preceding such election, shall be required: “You do swear (or affirm, as the case may be), that you are a qualified voter in this precinct, and that you have been a freeholder and a resident householder in this precinct for one year next preceding this election, and that ———, who now desires to vote, has resided in this state for six months immediately preceding this election; that he has resided in this township sixty days, and in the ward or precinct (as the case may be) thirty days, and is now a *bona fide* resident of this precinct.” All of which oaths shall be written or printed, and shall

Oath of elector.

Elector of foreign birth.

Oath of freeholder.

be signed by the person making such oaths in the presence of such board of elections, which oaths shall be administered by some member thereof, who shall affix his jurat thereto, which affidavits shall be attached to and returned, with the poll lists, to the office of the county clerk.*

Challenged person, to vote, when. SEC. 25. If the person challenged take such oath and shall have been supported by a freeholder of his precinct, as hereinbefore provided, he shall be admitted to vote, and it shall not be lawful thereafter for said board to examine any witnesses touching his qualifications, but if he refuse to take such oath, they may swear and examine other witnesses.†

Name of elector voting, announced. SEC. 26. When any elector offers to vote, the inspector shall pronounce his name in an audible voice, and if there be no objection he shall receive his ballot, and in the presence of the other judges put the same unopened into the ballot box, when the name of such elector shall be again distinctly repeated, by one of the other judges, in the presence of the clerks.

Name elector; poll lists. SEC. 27. The name of each elector, as he votes, shall be entered and numbered by such clerks on their poll lists.

When more persons designated on ticket than are to be elected. SEC. 28. If more persons are designated on any ticket to any office than are to be elected to such office, such part of the ticket shall not be counted to any of them; but no ticket shall be lost for want of form, if the board of judges can determine to their satisfaction the person voted for and the office intended. *Provided*, That no ballot shall be rejected by reason of any misarrangement of initial letters, or misspelling of any christian or surname of any candidate; but if the board are able to discover to the satisfaction of a majority thereof the person intended to be voted for, such ballot shall be counted.

Inspector, etc., not to vote, when, nor state result of counting. SEC. 29. No inspector, clerk or judge of any election shall vote after commencing to count the votes, nor publish any statement of the result of their counting until such election is closed.

No adjournment, until when. SEC. 30. After the opening of the polls at any election in this state, no adjournment shall be had nor any recess taken, until all the votes cast at such election shall have been counted and the result publicly announced.

Meals for election officers. SEC. 31. It shall be the duty of the township trustees in their respective townships, to cause the members of the election board in each township or precinct to be

* 17 Ind., 536; 35 Ind., 488.

† 5 Blkf., 138; 17 Ind., 536; 27 Ind., 492.

furnished with good, plain and substantial meals, at the regular hours for meals, during the election day and until the count is finished, but no spirituous, vinous or fermented liquors shall be furnished. Such trustees shall be allowed and paid by the county board the actual cost of such meals in their next regular account.

SEC. 32. When the polls are closed the inspector and judges shall open the ballot box and commence counting the votes; when the ballots shall be taken out carefully, one by one, by the inspector, who shall open them as he takes them out, and read aloud the name of each person printed or written thereon, and the office for which every such person is voted; he shall then hand the ballot to one of the judges, who shall examine the same and hand it to the other judge, who shall string it on a thread of twine.

SEC. 33. Any political party having candidates or a candidate to be voted for at any election may be represented by two qualified voters of such precinct, in the room where the votes are counted, who may witness the counting of the vote, and remonstrate against any fraud or irregularity that may occur: *Provided*, That such persons shall conduct themselves in a quiet and orderly manner, and shall not interrupt the board in the discharge of their official duties, except to state and file such protest. Said persons may be selected by the central committee of the county or township in which such precinct is located, or by the candidates to be voted for, or a majority of them, or by the voters of the respective parties then present: *Provided*, That no person shall be admitted to the room where the election board is sitting, save only the members of the board, the sworn clerks, and the witnesses herein provided for: *And, provided further*, That such witnesses shall enter the protests provided for herein in writing, and they shall be kept by the inspector and returned with the election returns and papers to the clerk's office, as provided in this act: *And, provided further*, That if the members of such election board, or any of them, shall, at any time during the progress of such election, refuse admittance to their room to any such witnesses, selected as provided for in this act, the person so offending shall be deemed guilty of a misdemeanor, and upon conviction may be fined therefor, by the proper court or jury trying the cause, in any sum not less than five nor more than fifty dollars.

SEC. 34. When the votes shall be counted, the board of judges shall make out a certificate, under their hands,

Ballots, when
and how counted.

Who may be
present at
counting of
votes.

Protest of witnesses.

Certificate of
judges.

stating the number of votes each person has received, and designating the office, which number shall be written in words, and such certificate, together with one of the lists of voters, and one of the tally papers, shall be deposited with the inspector, or with one of the judges selected by the board of judges.

Disposition of ballots, tally papers and list of voters.

Duty of the inspector.

Oath of inspector.

SEC. 35. As soon as the votes are counted and before the certificate of the judges, prescribed in the foregoing section is made out, the ballots, with one of the lists of voters and one of the tally papers, shall, in the presence of the judges and clerks, be carefully and securely placed by the inspector in the presence of the judges, in a strong and stout paper envelope or bag, which shall then be tightly closed and well sealed with wax, by the inspector, and shall be delivered by such inspector to the county clerk at the very earliest possible period before or on the Thursday next succeeding said election, and the inspector shall securely keep said envelope containing the ballots and papers therein and permit no one to open said envelope or touch or tamper with said ballots or papers therein; and upon the delivery of such envelope to the clerk, said inspector shall take and subscribe an oath before said clerk, that he has securely kept said envelope and the ballots and papers therein; and that after said envelope had been closed and sealed by him in the presence of the judges and clerks, he had not suffered or permitted any person to break the seal, or open said envelope, or touch or tamper with said ballots or papers; and that no person has broken such seal or opened said envelope to his knowledge, which oath shall be filed in said clerk's office with the other election papers.

Clerk to keep papers, etc., when; contest.

SEC. 36. The clerk shall securely keep said envelope so sealed with the ballots and papers therein, in the same condition as it was received by him from the inspector, in his office, unless opened by said inspector in the presence of the board of canvassers as herein provided, for the period of six months. But when such election is contested he shall preserve them so long as such contest is undetermined, subject to the order of the court trying such contest: *Provided*, That said inspector shall, after sealing said envelope containing such ballots and one of his poll books and tally paper, plainly mark said envelope upon the outside, in ink, with the name, number and township, and after each election the ballot box herein provided for shall be, by said inspector, deposited with the township trustee of the township in which his precinct is situate, for safe keeping; and said

Trustee to keep ballot boxes, key, etc.

officers of election shall, upon receiving the pay for their services as such from said township trustee, deliver to him the keys to said ballot box in their custody.

SEC. 37. The inspector of each township or precinct, or the judge of election, to whom the certificate, poll book and tally papers shall have been delivered, as provided for in this act, shall constitute a board of canvassers, who shall canvass and estimate the certificates, poll lists and tally papers returned by each member of said board, for which purpose they shall assemble at the court house on Thursday next succeeding such election, between the hours of ten A. M. and six o'clock P. M. Board of canvassers.

SEC. 38. The members of such board who shall assemble at such time and place, shall select one of their number as chairman, and the clerk of the circuit court shall act as their clerk. Officers of board.

SEC. 39. Such board when organized shall carefully compare and examine the papers entrusted to them, aggregate and tabulate from them, the vote of the county, a statement of which shall be drawn up by the clerk, and shall contain the names of the persons voted for, the office, the number of votes given in each township and precinct to each person, the number of votes given to each in the county, and also the aggregate number of votes given, which statement shall be signed by each member of said board, which canvass sheet, together with such certificates, poll books and tally papers shall be delivered to the clerk, and by him filed in his office. The same shall be preserved by him, open to the inspection of any legal voter of the county, or district, or state. Duties of board.

SEC. 40. Such board shall declare the person having the highest number of votes given for any office to be filled by the voters of a single county duly elected to such office, and certify the same in the statement above required. Who elected; certificate.

SEC. 41. If two or more persons shall have the highest and an equal number of votes for a single office to be filled by the voters of a single county, such board shall forthwith declare that no person is elected to fill such office, and shall certify the same in their statement; and, when filed, the clerk shall certify that fact to the tribunal whose duty it is to supply vacancies in such office, or to issue a writ of election to fill the same, as the case may require.* Tie vote, clerk to do what.

SEC. 42. No tally paper, poll book or certificate, returned from any election by the board of judges thereof, Tally paper, poll book, etc., not to be rejected, when.

shall be rejected for want of form, nor for lack of being strictly in accordance with the directions herein contained, if the same can be satisfactorily understood, and such board of canvassers shall in no case reject the returns from any precinct if the same be certified by the board of election of that precinct, as required by law, and presented to them by the inspector or one of the judges of said board.

Certificate of election.

SEC. 43. Where any person is elected to an office by the voters of a county, not to be commissioned by the governor, the clerk of the circuit court shall, after ten days from the time the board of canvassers have made their return, make out and deliver, on demand, to such person, a certificate of his election; and in case where any officer is to be commissioned by the governor, he shall make out a statement, under his hand and the seal of his court, specifying the number of votes given to each person for each office, and who has been declared elected, and shall transmit the same by mail to the secretary of state, within the time aforesaid.

Governor to issue commission, when.

SEC. 44. No commission shall be withheld by the governor on account of any defect or informality in the return of any election to the office of the secretary of state, if it can, with reasonable certainty, be ascertained from such return what office is intended and who is entitled to such commission.*

Certificate of votes cast for senator or representative.

SEC. 45. When two or more counties compose a district to elect a senator or representative, the clerk of the circuit court of such counties, on the day next succeeding the return day of such election, shall make out a certificate of votes received by each individual for senator or representatives, and declare (deliver) the same to the sheriff.

Certificate of election of senator or representative.

SEC. 46. Such sheriffs shall meet on the Wednesday next following the return day of such election, between the hours of one and six of the afternoon, at the court house of the oldest county in such district, where they shall compare the certificates delivered to them by the clerks, and shall jointly make out and transmit to the person having the highest number of votes, for senator or representative, a certificate of his election; the county first organized, or if two or more were organized at the same session, then the county having, by the auditor of state's last report the highest number of taxable polls, shall be deemed the oldest.

Tie vote for senator or representative.

SEC. 47. If, in such case, any two or more persons shall have the highest and an equal number of votes for

the same office, such sheriffs shall certify that fact to the clerk of the circuit court of the county in which such sheriffs shall have compared such votes, and such clerk shall forthwith certify the same to the governor.

SEC. 48. Clerks of the circuit court, on the day succeeding the return day of such election, shall make out in wards, certified statements, officially sealed, of the number of votes given to each person for governor and lieutenant governor, for representative in congress, judges of the supreme and circuit courts, clerk of the supreme court, reporter of the decisions of the supreme court, prosecuting attorney, superintendent of public instruction, secretary, auditor and treasurer of state, and for senator and representative in the general assembly, and shall deliver the same to some postmaster of the county, to be transmitted by mail to the secretary of state, taking from such postmaster, and filing a certificate, setting forth particularly the time when such certified statement was deposited in such post office.

Certificate of votes given to each person, for governor, etc.

SEC. 49. The secretary of state shall, in the presence of the governor, compare and estimate the number of votes given for judges of the supreme court, reporter of the decisions of the supreme court, clerk of the supreme court, secretary, auditor and treasurer of state, and superintendent of public instruction, and certify to the governor, the person receiving the highest number of votes for such offices, and also compare and estimate the number of votes given for judges of the circuit court and prosecuting attorneys, and certify to the governor the persons having received the highest number of votes in their respective districts, and thereupon the governor shall transmit by mail to such persons, their commissions.

Secretary of state to compare votes and certify same to governor.

SEC. 50. The secretary of state, as soon as he shall receive such certified statements, shall compare and estimate the votes given for representatives in congress, and certify to the governor the person having the highest number of votes, as duly elected; and the governor shall give to each of the persons returned to him, as aforesaid, a certificate of his election, sealed with the seal, and attested by the secretary of state: *Provided*, That no return of any county which has come into his hands, and which has been duly authenticated by the clerk thereof, under seal, as hereinbefore provided, shall be rejected by said secretary of state, but he shall estimate, aggregate, and tabulate and report to the governor the total number of votes cast in each county for each candidate for state office, supreme judge or other

Secretary of state to compare votes for representative in congress; governor's certificate of election.

Proviso.

officer to be elected by all the voters of the state, and members of congress, as evidenced to him by the face of such returns so certified to him.

Clerk's certificate of election of governor and lieutenant governor.

SEC. 51. Each clerk of the circuit court shall on the day following the return day of an election for governor and lieutenant governor, make out, at full length, two certified statements, under the seal of his court, of the number of votes each candidate received, one of which he shall transmit to the speaker of the house of representatives of the next general assembly, by his senator or representative, who shall deliver the same to the speaker on or before the second day of the session, and the other certified statement shall be transmitted by mail to Indianapolis, directed to said speaker, and to the care of the secretary of state, by whom the same shall be delivered to the speaker on or before the second day of the session.

Compensation of election officers.

SEC. 52. Each inspector, judge and clerk of any election shall be allowed and paid two dollars for each day's service while attending such election and performing the duties of their respective offices, and the same rate for one day's services, and mileage at the rate of five cents per mile, going and returning, shall be allowed and paid to each member of the board of canvassers.

[OF SPECIAL ELECTIONS.]

Special election, to be held when.

SEC. 53. A special election shall be held in the following cases:

Senator or representative.

First. Whenever a vacancy shall occur in the office of senator or representative during a session; or, when the legislature will be in session, after the occurrence of vacancy, and before a general election.

Congress.

Second. Whenever a vacancy shall occur in the office of representative in congress while in session, or when congress will be in session after such vacancy occurs, and before a general election.

Tie vote.

Third. Whenever two or more persons receiving votes at any election shall have the highest, and an equal number of votes for the same office.

Fourth. Or whenever a vacancy occurs in any office required to be filled at a special election.

Governor to order special election, when.

SEC. 54. Special elections not otherwise provided for, shall be ordered by the governor, who shall issue a writ or writs of election, directed to the sheriff or sheriffs of the proper county or counties, and such writ shall specify the county, district or circuit, in which such election is to be held, the cause and object of such

election, the name of the person whose office is vacant, and the day on which such election shall be held, which day shall be the same, in case such election is held in a district or circuit formed of two or more counties.

SEC. 55. The sheriffs who receive such writs ordering a special election, shall give the same notice thereof as is required of general elections: *Provided*, Such notice may be set up and published ten days only. Notice by sheriff.

SEC. 56. All special elections shall be conducted, returned, certified, canvassed, and certificates and commissions shall issue, and shall in all respects be governed by the provisions of this law regulating general elections, so far as applicable. Special elections, how conducted.

[OF TOWNSHIP ELECTIONS.]

SEC. 57. An election shall be held in each township of each county, in this state, on the first Monday of April, 1882, and every second year thereafter, for the purpose of electing justices of the peace, township trustees, assessors, constables, and such other officers for such township, as may be provided for by law; which elections shall be conducted by the officers of, and governed by the provisions of this law, with respect to general elections so far as applicable. Township elections, when held.

SEC. 58. The board of judges shall count the votes given for each person for each office, and certify the result, and the inspector shall file one of the poll books and tally sheets, with ballots on a string, in the clerk's office of the county, within ten days after such election. Board of judges to do what; certify.

If two or more have the highest and an equal number of votes for the same office, such judges shall, when the result is certified, determine by lot the person entitled to the office, and the next day the inspectors shall make out and deliver to the person elected, when demanded, a certificate for each person elected to any office in said township, except justices of the peace: *Provided*, That, if there is more than one precinct in said township, then the inspectors of the several precincts shall meet, on the day following the election, at the office of the township trustee, at as near ten o'clock A. M., as is practicable, and compare the poll books and certificates thereto held by them, and having aggregated the vote of the township, declare and certify the result; and if two or more persons have the highest and an equal number of votes for the same office, they shall determine, by lot, which shall be declared elected, and give a certificate accordingly. Tie vote.

Certificate en-
title holder to
office.

SEC. 59. Such certificate shall entitle the holder to qualify and enter upon the discharge of the duties of the office to which he is elected, at the expiration of ten days from the day of such election, except that the certificates of election of justices of the peace shall be forwarded by the inspector aforesaid to the clerk of the circuit court, who shall certify the result for that office to the secretary of state.

[OF CITY AND TOWN ELECTIONS.]

Precinct; no-
tice of chang-
ing same.

Officers of elec-
tion.

See act March
31, 1881, Acts
1881, p. 101.

SEC. 60. In city and town elections, each ward in which the number of voters does not exceed three hundred and fifty shall constitute a precinct: *Provided*, That the common council of any city, or the trustees of any town, shall make such changes in places of holding elections, or divisions in precincts, in their respective cities and towns as will limit the number of voters in each precinct to three hundred and fifty as near as may be: *Provided*, That no such changes or divisions shall be made without giving due notice, at least one month before any election, either by publication in the newspaper having the largest circulation in the county in which such city or town is situated, or by posters put up in four of the most public places in such precinct. Such council or trustee shall appoint three qualified voters in each precinct, one to act as inspector and two as judges of elections, who shall have been freeholders and resident householders in such precinct for at least one year next preceding any election at which they may officiate; such inspectors and judges to be appointed according to such regulations as are hereinafter specified. Such inspector and judges, when so appointed, shall constitute a board of election, which board of election shall have all the powers and shall perform all the duties of boards of election, as hereinbefore specified.*

[OF A RE-COUNT.]

Contest of elec-
tion.

SEC. 61. At any time within ten days after the Thursday next succeeding any election, any candidate for office at such election desiring to contest the same, may petition in writing the circuit court, if in session, or the judge thereof in vacation, for a re-count of the ballots cast at such election, by three commissioners to be appointed by the court or judge, two of whom shall be

* 39 Ind., 488; 34 Ind., 425.

from different political parties: *Provided*, That such appointments shall be made from the political parties which cast the highest number of votes at the last preceding general election.

SEC. 62. Upon the petition of such candidate, duly verified, showing that he desires to contest such election, and honestly believes that there was a mistake or fraud committed in the official count, and that he desires a re-count of the ballots cast at said election for the office for which he was a candidate, and upon proof that he has served a written notice upon the opposing candidate, of the time and place of such application, five days before the hearing, and upon his furnishing a written undertaking, with sufficient freehold surety, that he will pay all the costs of such re-count, the court or judge shall grant the prayer of said petition, and order said re-count to be made.

Petition for re-count.

Court allow same, when.

SEC. 63. In appointing such commissioners to make said re-count, the court shall fix the time within which the same shall commence, not exceeding twenty days therefrom, and the clerk of the circuit court shall act as the clerk of said commissioners. The order shall provide that each of the candidates may be present during said re-count, and two qualified voters of the county, selected by each of said candidates, may also be present, who may witness the re-count of the vote, and such witnesses shall conduct themselves in a quiet and orderly manner, and shall not interrupt said commissioners while in the discharge of their duties. Such order shall be entered on the order book of the circuit court.

Re-count by whom.

Who present.

SEC. 64. When said re-count is finished, the commissioners, or a majority of them, shall make out a certificate, under their hands, stating the number of votes that each of said candidates has received for said office in each township and precinct, and which of said candidates, as shown by the said re-count, received the highest number of votes, and what his majority or plurality was, and said certificate shall be filed with the clerk of the circuit court, and by him recorded in the order book of said court. Such certificate or the record thereof may be used as evidence of the facts therein recited upon the trial of any contest of said election between said candidates.

Certificate of vote by re-count.

Evidence in trial.

SEC. 65. No adjournment shall be had until said re-count is finished, and said certificate made out and filed, and said commissioners shall each be allowed and paid by said petitioner at the rate of three dollars per day, each, for their services; and said clerk shall, as

When commissioners adjourn.

Compensation.

soon as such re-count is completed, replace said ballots in the ballot boxes, securely lock and seal them and keep them as above provided. For his services in the matter of such re-count he shall receive from such petitioner the sum of five dollars.

[OF THE CONTEST OF ELECTIONS.]

Who may contest election. SEC. 66. The election of any person declared elected by popular vote to any office, whether state, county, township or municipal, may be contested by any elector who was entitled to vote for such person. The person contesting such election shall be known as the contestor; the person whose election is contested, as the contestee.

Specification of contest, with whom filed. SEC. 67. When such elector may choose to contest the election of any state officer, elective by the people, he shall, within twenty days after the first day of the next session of the general assembly thereafter, deliver to the presiding officer of the house of representatives, a specification of the grounds of such contest; which specification shall be verified by the affidavit of such elector.

Notice of contest. SEC. 68. As soon as such presiding officer receives such specification, he shall make out a notice of contest, which, together with a copy of the specifications, he shall cause to be directed and delivered to the person whose election is contested; and shall immediately give notice to both houses that such specifications have been received.

Legislative committee to try contested election case. SEC. 69. Each house shall choose by a *viva voce* vote seven members of its own body, and the members thus selected shall constitute a committee to try and determine such contested election, and for that purpose shall hold their meetings publicly, at the capitol, at such time and place as they may designate, and may adjourn from day to day, or to a day certain, until such trial shall be determined; shall have power to send for persons and papers and to take all necessary means to procure testimony, extending like privileges to the contestor and the contestee, and shall report their judgment in the premises to both branches of the general assembly, which report shall be entered on the journals of the respective houses, and the judgment of such committee shall be conclusive; and if such election be adjudged invalid, such office shall be vacant.

Powers of committee. SEC. 70. Any such elector who may choose to contest the election of any person declared elected to a seat in the senate or house of representatives, shall, within

Contesting seat in senate or house of representatives.

ten days after such election, file with the clerk of the circuit court of the county in which the alleged cause of contest originated, a statement of the grounds of contest on which he relies; and that he was entitled to vote at such election, verified by his affidavit.*

SEC. 71. When such statement shall be filed, such clerk shall issue a commission directed to two justices of the peace of his county, not of kin to the contestor, nor to any person who was a candidate at such election for the office the election to which is contested, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the time of issuing the same, for the purpose of taking the depositions of witnesses. Depositions, by whom taken.

SEC. 72. Written notice of such contest, specifying the time and place of taking depositions, and before whom to be taken, and a copy of such statement, certified by such clerk, shall, within ten days after such statement shall have been filed, be delivered to the contestee, or if he can not be found, shall be left at his last usual place of residence by the sheriff of the county, who shall return to such clerk a certified copy of such notice, with the manner and time of service indorsed thereon, for which he shall receive from the contestor the same fees allowed in writs of summons. Notice to contestee.

SEC. 73. Either of such justices shall have power to issue subpoenas, to be served by the sheriff; and when met at the time and place appointed to take depositions, shall have the same power to issue attachments and assess fines against witnesses as is given to justices in the trial of suits instituted before them. Powers of justices: trying cases.

SEC. 74. If either of the justices first appointed, becomes unable to proceed in such examination, such clerk shall fill the vacancy with any other justice of the county. Vacancy, how filled.

SEC. 75. Such justices shall meet at the time and place appointed, and take and certify such depositions, as in other cases; and may adjourn from time to time, and when the same is closed, shall deliver the depositions, with the commission, to such clerk. Justices to meet when; depositions to whom delivered.

SEC. 76. Such clerk shall seal up the depositions, original statement of the grounds of contest, the copy of the notice served on the contestee, and the commission issued to such justices; indorse thereon the names of the contesting parties, and the branch of the legislature before which such contest is to be tried, and transmit the same by mail to the secretary of state. Clerk to forward papers to secretary of state.

Secretary of
state to trans-
mit papers to
whom.

SEC. 77. The secretary of state, on or before the second day of the session of the general assembly held next thereafter, shall deliver such depositions to the presiding officer of the proper house, who shall immediately lay the same before such house.

Depositions
taken any time
may be read.

SEC. 78. At any time after notice of contest, and before final determination, either party may take depositions to be read on the trial, under the rules regulating the taking of depositions, to be read in the circuit court, and such depositions shall be sent by mail to the secretary of state, who shall deliver the same unopened to the presiding officer of the proper house.

Contest for
what causes.

SEC. 79. Any election, the contest of which is provided for in this act, may be contested for any of the following causes :

First. For irregularity or malconduct of any member or officer of the proper board of judges or canvassers.

Second. When the contestee was ineligible.

Third. When the contestee, previous to such election, shall have been convicted of an infamous crime; such conviction not having been reversed, nor such person pardoned at the time of such election; or,

Fourth. On account of illegal votes.*

Election not set
aside for irreg-
ularity, mal-
conduct, etc.

SEC. 80. No irregularity or malconduct of any member or officer of a board of judges or canvassers, shall set aside the election of any person, unless such irregularity or malconduct was such as to cause the contestee to be declared elected, when he had not received the highest number of legal votes; nor shall any election be set aside for illegal votes, unless the number thereof given to the contestee, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office.†

Contest of
county and
township of-
fices; where
tried.

SEC. 81. All contests for county and township offices shall be tried in the proper county; and all contests for district and circuit offices, not otherwise provided in this act, shall be tried in the county giving the largest vote for such office at such election; and whenever any elector shall choose to contest such election, he shall file with the auditor of the proper county, within ten days after such person has been declared elected, a written statement specifying the grounds of contest, verified by the affidavit of such elector.‡

*7 Blkf., 607; 35 Ind., 485.

†34 Ind., 185, 425; 50 Ind., 298.

‡9 Ind., 475; 33 Ind., 197, 505; 27 Ind., 191; 28 Ind., 131; 31 Ind., 151; 42 Ind., 320; 48 Ind., 301; 50 Ind., 298.

SEC. 82. When such statement is filed with the auditor of the proper county, he shall immediately give notice in writing to the clerk of the circuit court, that the election to such office is contested; and when the office of county auditor is contested, such statement shall be filed with the clerk, who shall do the duties otherwise required by this act of the auditor: the filing of such statement being notice to himself.

Notice of contest by auditor to clerk.

Clerk to perform duties of auditor, when.

SEC. 83. When such statement is filed with the auditor, he shall issue a notice to the board of county commissioners to meet at the court house at a designated time, not less than ten nor more than twenty days thereafter, to try such contested election, and shall issue a notice to the contestee to appear at the time and place, specified in the notice to the commissioners, which, with a copy of such statement, shall be delivered to the sheriff of the county, who shall, within five days thereafter, serve the same on the contestee, by delivering to him a copy of such notice and statement, or leaving a copy thereof at his last usual place of residence.*

County commissioners to try contested case of auditor.

SEC. 84. The auditor, at the request of either party, shall issue subpoenas, which shall be served by the sheriff; such board of commissioners shall try and determine such contest, and shall have power to compel the attendance of witnesses, to swear and examine the same, punish contempts as other courts, to adjourn or continue the trial from time to time, not exceeding twenty days altogether, and to make the necessary orders for the payment of costs, and to coerce the payment of the same, and shall be governed in such trial by the rules of law obtaining in circuit courts; and if it be proved that any person, other than the contestee, has the highest number of legal votes, such board shall declare such person elected and certify the same to the proper officer.

Auditor to issue subpoenas.

Powers of commissioners trying case.

SEC. 85. Appeals may be taken herein, as from other decisions of such board: *Provided*, The same be taken within ten days.

Appeals.

SEC. 86. If upon such appeal the circuit court confirm such election, a certificate thereof shall issue; if such election be annulled and no other person declared elected to the same office it shall be declared vacant.

Certificate of election on appeal; vacancy.

SEC. 87. Any witness who voted at such election, when called to testify in any such case, shall be required to answer touching his qualifications, and if he was not a qualified elector he shall be required to answer for

Qualification of witness.

whom he did vote, and such admissions shall not be used against him in any prosecution for illegal voting.

Fees in con-
tested election
case.

SEC. 88. The sheriff, auditor, clerk, and justices of the peace, for services rendered by them in case of contested elections, shall receive from the party at whose instance such services are performed the fees usually allowed for similar services in other cases, which fees shall be taxed as costs against the losing party and collected as other costs are taxed and collected.

Commissioner
to try cause.

SEC. 89. The court trying the cause, at the request of the contestor and contestee, in writing, or upon the application of either party, supported by affidavit showing that a saving of expense to the parties, the convenience of the witnesses, and the ends of justice will be promoted thereby, may appoint a commissioner to take the testimony of witnesses in writing at any time before the first hearing, and shall provide, in the order of appointment, that each party shall give reasonable notice to the other of the time and place of such taking. Such commissioner shall have power to subpoena and compel the attendance of witnesses residing in the county, and it shall be his duty to take down in writing all the testimony offered by the parties, and to note all objections to the testimony, and he shall report the same to the court trying the cause within the time limited by the order appointing him.

Contest for
municipal of-
fices.

SEC. 90. All contests for municipal offices shall be tried before the circuit court of the proper county in the manner provided by law for the contest of county and township offices. The clerk of the circuit court shall be the person with whom the notice of contest shall be filed, and he shall perform all the duties required to be performed by him and the auditor in other cases, and the contest shall be set down for trial at the next term of such circuit court.

Appeal.

SEC. 91. In all cases of contested elections where an appeal has been taken from the board of county commissioners to the circuit court, either party feeling aggrieved by the judgment of said court may appeal therefrom to the supreme court, as in other civil cases. The appeal bond in such case shall be in a penalty sufficient to secure any damage which may accrue by a stay of proceedings upon the judgment, and whenever by reason of such appeal, a party may be excluded from the office to which he may be entitled, pending such appeal, the principal and sureties in said bond shall be liable thereon for the amount of the emoluments of the office to the party deprived thereof.

[OFFENSES AGAINST THE RIGHT OF SUFFRAGE.]

SEC. 263. Whoever, not having the legal qualifications of a voter, at any election authorized by law to be held in this State for any officer whatever, votes or offers to vote at such election, shall be fined not more than five hundred dollars nor less than ten dollars, imprisoned in the county jail not more than one year nor less than one month, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. Illegal voter.

SEC. 264. Whoever knowingly votes, or offers to vote, in any precinct or ward, except the one in which he resides, shall be fined not more than five hundred nor less than ten dollars, imprisoned in the county jail not more than one year nor less than one month, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. Voting in
wr'ng precinct.

SEC. 265. Whoever passes from any other state into this state and votes, or attempts to vote, at any voting precinct or ward of this state, not being at the time a *bona fide* resident of such voting precinct or ward, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. Coming into
state to vote
illegally.

SEC. 266. Whoever hires, or solicits, any person to come from any state into this state for the purpose of voting at any election therein, or to pass from any county to another county, or from any township into another township, or from any voting precinct or ward into another voting precinct or ward of the state, for the purpose of voting therein at any election held therein, such person, so solicited, not being a legal voter in such county, township, precinct or ward, shall be fined not more than one thousand dollars nor less than fifty dollars; imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. Importing voters.

SEC. 267. Whoever votes more than once at any election in this state, either at the same precinct or ward or at different precincts or wards, shall be fined not more than one thousand dollars nor less than fifty dollars; imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered inca- Voting more
than once.

pable of holding any office of trust or profit for any determinate period.

Hiring men to
vote or refrain
from voting.

SEC. 268. Whoever hires, buys, or offers to hire or buy, or furnishes any money or other means to be used, or directs or permits his money or other means to be used, to induce, hire or buy any person to vote, or refrain from voting, for any candidate for any office, or whoever attempts to induce any person to vote, or to refrain from voting, for any candidate for any office, by offering such person any reward or favor, shall be fined not more than one thousand dollars nor less than twenty dollars; imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

Selling vote.

SEC. 269. Whoever sells, barter, or offers to sell or barter his vote for any candidate for any office either for any money or property or thing of value, or for any promise or favor or hope of reward, given or offered by any candidate, or by any other person or persons, shall be fined not more than one thousand dollars, nor less than fifty dollars; imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

Officer tamper-
ing with bal-
lots.

SEC. 270. Whoever, being a township trustee, inspector, judge of election or clerk of election, takes out of the ballot box any ballot legally deposited therein, for the purpose of destroying the same, or substituting another in its place, or after the same has been legally taken out, intentionally destroys or misplaces the same with the intent to substitute another ballot therefor, or with the intent to prevent the same from being counted at such election, or knowingly enters upon the poll books the name of any person who has not legally voted at such election, or intentionally tallies any vote to any candidate not voted for by such ballot, or permits any one of these acts to be done, shall be fined not more than one thousand dollars nor less than fifty dollars; imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

Officer altering
returns.

SEC. 271. Any township trustee, inspector or any person acting for or on behalf of any trustee or inspector, while forming a board of canvassers or before the canvassing of any board of canvassers, or after the adjournment of any board of canvassers, who shall, with

intent to cheat and defraud, alter any election return, as made by the election board of any voting precinct, either by increasing the vote of any candidate or reducing the same, or shall intentionally destroy, misplace or lose any poll book or tally sheet, or any clerk of court who shall, with intent to cheat and defraud, change or alter in any way the vote of any candidate as returned by the board of canvassers or any such trustee, inspector, clerk or deputy clerk or other person acting for such persons, who shall consent to the same being done, or who shall permit the same to be done, shall be fined not more than one thousand dollars nor less than fifty dollars; imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

SEC. 272. Whoever, being an inspector or judge of any election held within this state, knowingly and willfully or corruptly, refuses or neglects to receive the vote of any legal voter, at any election held within this state, shall be fined not more than five hundred dollars, nor less than fifty dollars, and disfranchised and rendered incapable of holding any office of trust or profit for a determinate period. Rejecting a legal vote.

SEC. 273. Whoever, being an inspector, judge or clerk of an election, attempts to induce, by persuasion, menace or reward, or promise thereof, any elector to vote for any person, the person so offending shall be fined not more than one hundred dollars, nor less than ten dollars. Officer persuading or menacing voter.

SEC. 274. Whoever, being a judge, inspector, clerk, or other officer of an election, opens or marks, by folding or otherwise, any ticket presented by such elector at such election, or attempts to find out the names thereon, or suffers the same to be done by any other person, before such ticket is deposited in the ballot box, shall be fined in any sum, not more than one hundred dollars, nor less than ten dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. Officer opening or marking ticket.

SEC. 275. Whoever furnishes an elector who can not read the English language, at any election held pursuant to law, with a ticket which such person shall represent to such elector, as containing a name different from the one printed or written thereon, shall be fined not more than one hundred dollars, nor less than ten dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. Deceiving illiterate voter.

Causing person
to vote con-
trary to his in-
tention.

SEC. 276. Whoever fraudulently causes, or attempts to cause, any elector, at any election held pursuant to law in this state, to vote for a person different from the one he intended to vote for, shall be fined not more than one hundred dollars, nor less than ten dollars.

Using violence,
bribery, etc., to
affect election.

SEC. 277. Whoever, for the purpose of influencing a voter, seeks, by violence or threats of violence, or threats to enforce the payment of a debt, or to eject, or threaten to eject, from any house he may occupy, or to begin a criminal prosecution, or to injure the business or trade of an elector, or, if an employer of laborers, or an agent of such employer, threatens to withhold the wages of, or to dismiss from service, any laborer in his employment, or refuses to allow any such employe time to attend at the place of election and vote, shall be fined not more than one thousand dollars, nor less than twenty dollars, imprisoned in the state prison, not more than five years, nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

Obtaining bal-
lot boxes by
force.

SEC. 278. Whoever, at any election, unlawfully, either by force, fraud or other improper means, obtains or attempts to obtain, possession of any ballot box, or any ballots therein deposited, while the voting at such election is going on, or before the ballots are duly taken out of such ballot box and counted by the election board according to law, shall be fined not more than one thousand dollars, nor less than fifty dollars; imprisoned in the state prison, not more than five years, nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

Destroying
ballot boxes or
ballots.

SEC. 279. Whoever unlawfully destroys or attempts to destroy any ballot box used, any ballot or vote deposited, or any poll book kept at any election, shall be fined not more than one thousand dollars, nor less than fifty dollars, imprisoned in the state prison, not more than five years, nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

Inducing voter
to re-sign coun-
ty seat petition.

SEC. 280. Whoever, by persuasion, menace or reward, or promise thereof, induces or attempts to induce, any legal voter of any county to sign any written or printed petition for the relocation of the county seat of any county, or any remonstrance against such relocation, shall be fined not more than five hundred dollars, nor less than ten dollars, to which may be added imprisonment in the county jail, not more than six months, nor

less than ten days, and he shall be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

SEC. 281. Whoever, being a legal voter of any county, sells or barter or offers to sell or barter for money, property or thing of value, or for any promise or hope of reward, given or offered by any person, his signature to any written petition for the relocation of any county seat, or to any remonstrance against such relocation, shall be fined not more than five hundred dollars, nor less than ten dollars, to which may be added imprisonment in the county jail, not more than six months, nor less than ten days, and he shall be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

Selling signature to county seat petition.

SEC. 282. Whoever votes more than once at any election for the relocation of any county seat, or for aid to any railroad, either at the same precinct or at different precincts, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not more than fifty dollars, nor less than ten dollars.

Railroad or county seat election; voting more than once.

SEC. 283. Whoever buys, or offers to buy, either by himself or by any other person, or furnishes any money or any other means to be used, or who shall permit his money or other means to be used, to hire, buy or induce any person to vote for or against the removal of a county seat, or for or against the appropriation of aid to any railroad; or whoever attempts to induce any person to vote for or against such removal or appropriation, by offering any reward or favor, shall be deemed guilty of a misdemeanor; and whoever, being a voter of this state, sells or barter, or offers to sell or barter, for any money or property, or anything of value, or any promise or hope of reward given or offered by any person or persons, his vote for the removal or for the relocation of a county seat, or against such removal or relocation, or against such appropriation or in favor of such appropriation for said railroad, shall be deemed guilty of a misdemeanor, and, upon conviction of violating any of the provisions of this section, the person so offending shall be fined in any sum not more than one hundred dollars, nor less than twenty-five dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period not exceeding five years.

Railroad or county seat election; buying vote.

SEC. 284. Whoever gives or offers a bribe, threat or reward, to procure his election to any office under the constitution or laws of this state, shall be fined not more

Bribing to procure election.

than one thousand dollars, nor less than fifty dollars, and imprisoned in the state prison not more than five years nor less than one year ; and such person so offending, if elected to such office, shall be disqualified from holding office during the term for which he may have been elected, and also disfranchised for any determinate period.

INDEX.

	PAGE.
ACTS GOVERNING ELECTIONS—March 30, 1881	29
February 21, 1881	51
April 21, 1881	53
ADJOURNMENT of board of election not permitted	17
AMENDMENTS to constitution	52
APRIL ELECTION—How conducted	6
Statutory provision for	67
What officers elected	6
APPEALS from contested cases, before board of commissioners	25
Statutory provision for	74
ARREST—Electors free from, when	28
ASSESSORS—When elected	6, 67
AUDITOR OF COUNTY—Duties of, in cases of contest	24
Shall convene board	24
BALLOT-BOX—Provided by commissioners	10
How made	57
How locked.	58
How keys shall be kept	63
Shall contain two locks	10
BALLOT—Vote by, discussed	28
Defined	29
Secrecy of inviolate	40
Statute concerning construed	38
BALLOTS—Vote shall be by	58
Shall be of uniform appearance	58
Shall not be marked	28
How received	16
How disposed of in general elections	7
How disposed of in township elections	67
BOARD OF ELECTION—How formed	11
Shall inform challenged party of his rights	16
May receive or refuse challenged party's vote	16
Liability of.	16
Clerks of	16
May admit witness to count	18
Shall certify votes cast.	18
Shall take oath to discharge duties	12
Oath of shall be in writing and returned	13
Shall open election when	13
Shall not adjourn until count is made	17
Penalty for refusing witness to count	18
May not vote after count commences	17

	PAGE.
BOARD OF CANVASSERS	18
When and where to meet	18
Shall sign tabulated statement	19
Shall certify party elected	19
Town elections	21
Duties of defined	47
BOARD OF COMMISSIONERS—Shall try contests, when	24
May continue contest case	25
Duties in forming precincts	9
In appointing inspectors.	10
BRIBERY—Disqualifies officer	6
CANVASSERS, BOARD OF—See board of canvassers.	
CAUSE of contest	16
CAUSE of challenge.	14
CHALLENGE—By whom made.	14
Duties of election board	14
Oath of challenged party	14
Oath of freeholder	15
Subject discussed.	29
CITY AND TOWN ELECTIONS	21
Duties of common council	21
Of town trustees	21
May change precincts	21
Shall appoint election boards	21
Under Act April 21, 1881	33
Number of votes in precinct not to exceed 350	34
CLERKS OF BOARD OF ELECTION—How and by whom appointed	12
Oath of	13
May not vote after count commences	17
Duties of	13
CLERK OF CIRCUIT COURT.	7
Duties of touching elections	7
Shall certify statement.	8
Shall transmit same by mail.	8
When justice is elected.	9
In contested elections	9
In cases of recount.	9
Shall certify depositions in contests.	23
When election of auditor is contested.	73
Shall forward papers to secretary of state.	72
When governor is elected	66
Duties defined	46
COUNTY COMMISSIONERS—Duties defined	9
When and shall form precincts	9
Shall provide ballot boxes	10
Shall appoint inspectors.	10
Shall try contests of election	10
Ballot boxes to be provided with two locks	58
CONSTITUTIONAL PROVISIONS—Qualifications of electors.	5
Residence of electors	5
Age of elector	5
Time of general election	5
CONTESTED ELECTIONS	68
State officers, who tried	22
County and district offices	23
Senators and representatives	23
Principal officers	25
COUNT of votes	17
DEPOSITIONS in contested elections	23
DECEIVING VOTER—Penalty for	31
DESTROYING BALLOT BOX—Penalty for	31

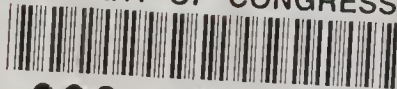
	PAGE.
DISABILITY defined	44
DOMICILE or residence	26
ELECTION—GENERAL—Statute	53
Time of holding	5
Board of, how chosen	6
How opened	13
When may be closed	13
May not adjourn	13
When vote is challenged	16
Board's duty when vote is challenged	16
Shall give notice of closing	13
ELECTOR—Qualifications of	5
Residence of	5
Rights of	26
May contest election when	32
May appeal from decision in contest	32
Presumed to know candidate he votes for	32
Eligibility of candidate discussed	32
Of cities and towns	33
ELECTOR'S FOR PRESIDENT—How and when elected	6
FOREIGN BIRTH—Citizen of	5
FORM OF OATH—By inspector on returning papers	7
Of inspector	12
Of clerks	13
Of challenged voter	14
Of challenged voter of foreign birth	15
Of resident freeholder	13
FREEHOLDER, OATH OF—When vote is challenged	13
May challenge judge of election	28
GENERAL ELECTION	53
What officers chosen at	5
Officers of	6
GOVERNOR—How and when elected	8
Power of, touching commissions	45
GROUNDS OF CONTEST	23
HOME, OR DOMICILE of voter	26
When shall be considered	27
Definition of domicile	27
HIRING VOTER—Penalty for	30
INELIGIBILITY of candidate	32
INSPECTOR—How appointed	10
Township trustee inspector of his own precinct	9
When more precincts than one in township	10
Duties of inspectors	11
Is chairman of election board	11
Oath of inspectors	12
Who may administer oath of	12
How he shall receive ballots	16
May not mark ballot	39
Shall not vote after count is begun	60
Shall not state result of count when	60
Duties in counting votes	17
Shall seal papers with wax	18
Shall make oath that ballots have not been tampered with	18
INTENTION affects residence	27
IMPRISONMENT disfranchises voter	27
INTIMIDATING voter	30
JUDGES of election	11
May be removed for cause	11
Qualifications of	11

JUDGES—Continued.	PAGE.
Oath of—Shall be in writing	12
Shall repeat name of voter	16
Duties in making count	17
JUDGES OF SUPREME COURT—How and when elected	8
JUSTICES OF THE PEACE—When elected	6
Duties in contested election cases	23
KINSHIP to candidate disqualifies board	28
KEYS of ballot boxes shall be kept by trustee	63
LAWS GOVERNING ELECTIONS—Act of March 30, 1881	49
Act of February 21, 1881	51
Act of April 21, 1881	53
LIABILITY of board of election	30
Of elector for illegal voting	30
For coming from another state	30
For voting more than once.	30
LIEUTENANT GOVERNOR—When elected	8
MAILING ELECTION—Election returns	8
Certificate of postmaster	8
MAJORITY of votes will not elect if candidate ineligible	32
Doctrine discussed	32
MATERIAL facts to be declared by board of canvassers	47
MEALS to be furnished board of election	61
NAME of elector shall be announced.	59
Shall be entered on poll list	59
Shall be repeated by judge.	59
NOTICE of general election	7
Given by sheriff	66
Of change of precinct	10
Of special elections	21
Of recount	21
Of contest	22
Of change of precincts in cities or towns	67
OATH OF inspector, before clerk of circuit court	7
Inspector shall be in writing	12
Of judges shall be in writing	12
Of clerks shall be in writing	13
Shall be attached to returns	13
Of challenged voter	14
Of freeholder in support of ehallenged voter	14
OPENING election	13
PENAL LAWS—For illegal voting	31
PENALTY for refusing witness to count	18
POLLS—When shall be opened	13
When closed	13
PRECINCTS—How formed	9
How bounded	9
Township may form one	10
Notice of change of	10
In cities and towns	33
Number of voters in	34
PROCLAMATION of opening election	13
Of closing	13
QUALIFICATIONS of elector	53
QUESTION of residence discussed	27
Of secrecy of ballot discussed	35
Of eligibility of candidate discussed	41
RECESS—Not allowed until count is completed	17
RECOUNT of ballots	21
Petition for	21
Commissioners to make	22

	PAGE.
REPRESENTATIVE—How elected and certified	8
RETURN OF ELECTION—Made when and by whom	18
How made	19
Shall not be rejected for informality	19
What papers returned	56
RESIDENCE—What constitutes	26
Subject discussed	27
How lost	28
To entitle elector to vote	58
RIGHTS of electors	26
May vote in his own precinct	28
May not mark his ticket	28
May not vote out of his precinct	30
May not pass from another state into this	30
May contest any election if entitled to vote at it	32
May challenge any vote offered	14
May not be arrested on election day	28
His name shall be entered on poll list	14
SENATORS OF STATE LEGISLATURE—How elected	6
When contested	8
SHERIFF'S DUTIES—General elections	53
In special elections	20
In contested elections	24
SPECIAL ELECTIONS—How ordered	20
Duties of board of	20
How conducted	20
Notice of, how given	24
SUPERINTENDENT—How and when elected	6
STATUTES GOVERNING ELECTIONS—Only directory	8
SUPREME COURT DECISIONS—Numbering or marking ballot	34
TALLY SHEETS—What shall contain	18
TEMPORARY RESIDENCE makes no change of political rights	26
THREATS or intimidation, penalty for	30
TERM of office explained	42
Constitution construed by supreme court	42
TOWN ELECTION	33
May be divided into precincts of 350 votes	33
Trustees of to appoint inspectors	34
Qualification of election board of	34
Supercedes act of March 31, 1881	33
Notice of change, or formation of precincts	67
TOWNSHIP ELECTIONS	67
When held	19
Board of	19
What officers elect at	6
When more than one precinct	20
TOWNSHIP—May form one precinct	9
Trustee inspector when but one precinct	10
Inspectors appointed when more than one	10
TRUSTEE OF TOWNSHIP—When elected	6
Inspector of his own precinct	9
Shall retain keys of ballot boxes	63
Shall keep ballot boxes	63
Shall furnish meals to board	17
VIVA VOCE elections	6
VOTES—How counted	16
By ballot explained by supreme court	35
For ineligible candidate, effect of	32
VOTER—Where must reside	26
Must vote in his own precinct	26

VOTER—Continued.	PAGE.
Can not be compelled to disclose for whom he voted	38
WITNESS from each party shall be admitted to see count	17
May protest against fraud or irregularities	17
In contested cases	31
Depositions of in contested cases	25

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